

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>BARRY M. PORTNOY and</b>	:
<b>GERARD M. MARTIN, as Trustees for</b>	:
<b>HUB PROPERTIES TRUST</b>	:
<b>Plaintiffs,</b>	: <b>NO. 02-CV-2905</b>
	:
<b>v.</b>	: <b>HONORABLE CLIFFORD</b>
	: <b>SCOTT GREEN</b>
<b>OMNICARE PHARMACEUTICS, INC.</b>	:
<b>and</b>	:
<b>OMNICARE CLINICAL RESEARCH, INC. ,</b>	:
<b>Defendants.</b>	:
	:

**APPENDIX OF EXHIBITS  
IN SUPPORT OF PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION  
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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C	Selected Pages from the February 11, 2003 Deposition of Paul Leonard
D	Selected Pages from the March 4, 2003 Deposition of David Morra
E	Selected Pages from the October 29, 2002 Deposition of David Morra
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R	Selected Pages from the December 12, 2002 Deposition of David Fant
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## LEASE AGREEMENT

LANDLORD:

525 VIRGINIA DRIVE ASSOCIATES LIMITED PARTNERSHIP  
a Pennsylvania limited partnership  
443 South Gulph Road  
King of Prussia, Pennsylvania 19406

TENANT:

BIO-PHARM PHARMACEUTICS SERVICES, INC.  
a Delaware corporation  
425 Delaware Drive  
Fort Washington, Pennsylvania 19034-2703

PREMISES:

525 Virginia Drive  
Fort Washington, Upper Dublin Township  
Montgomery County, Pennsylvania

DATE OF LEASE:

December 3, 1996

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LEASE AGREEMENT

THIS LEASE (the "Lease") is made as of the 3rd day of December, 1996 between 525 VIRGINIA DRIVE ASSOCIATES LIMITED PARTNERSHIP, a Pennsylvania limited partnership (herein referred to as "Landlord") whose address is 443 South Gulph Road, King of Prussia, Pennsylvania 19406 and BIO-PHARM PHARMACEUTICS SERVICES, INC., a Delaware corporation (herein referred to as "Tenant") whose address is Four Valley Square, 512 Township Line Road, Blue Bell, PA 19422.

PREAMBLE

Basic Lease Provisions and Definitions

In addition to other terms elsewhere defined in this Lease, the following terms whenever used in this lease shall have only the meanings set forth in this section, unless such meanings are expressly modified, limited or expanded herein.

A. Additional Rent shall mean any and all sums other than Fixed Basic Rent which may be due from time to time from Tenant to Landlord pursuant to the terms of the Lease.

B. Brokers shall mean Preferred Real Estate Advisors, Inc. and Julien J. Studley, Inc.

C. Building shall mean the commercial building situate at 525 Virginia Drive, Fort Washington, Upper Dublin Township, Montgomery County, Pennsylvania, consisting of approximately 124,000 gross rentable square feet as shown on Exhibit "A" attached hereto.

D. Demised Premises or Premises shall mean for Lease Year 1: approximately 40,000 square feet of the Building, as described in Exhibit "A" and for Lease Year 2: approximately 80,000 square feet of the Building, as described in Exhibit "A" and for the balance of the Term and any Renewal Term, the entire Building.

E. Exhibits shall be the following, attached to this Lease, incorporated herein and made a part hereof:

Exhibit A	Description of Building
Exhibit B-1	Plans and Specifications for Landlord Improvements
Exhibit B-2	Plans and Specifications for Tenant Work
Exhibit C	Permitted Exceptions
Exhibit D	Memorandum of Lease
Exhibit E	Form of Lease Guaranty

F. Fixed Basic Rent shall mean: Twelve Million Three Hundred Seventy Eight Thousand and 00/100 Dollars (\$12,378,000.00), for the Term, payable as follows:

<u>Year</u>	<u>Yearly Payments</u>	<u>Equal Monthly Payments</u>
Lease Year 1	\$220,000.00	\$18,333.34
Lease Year 2	\$440,000.00	\$36,666.67
Lease Year 3 - 4	\$806,000.00	\$67,166.67
Lease Year 5 - 6	\$868,000.00 7-	\$72,333.34
Lease Year 7 - 15	\$930,000.00 7.50	\$77,500.00

G. Rent Commencement Date is as defined in Section 1.02 hereof.

H. Permitted Uses is as defined in Section 5.01

I. Purchase Option is as defined in Article 15 hereof.

J. Renewal Option is as defined in Article 14 hereof.

K. Security Deposit shall be Zero and 00/100 Dollars (\$0.00)

L. Term is as defined in Section 1.02 hereof

M. Guarantor shall mean LB.A.H., INC., a Delaware corporation.

For and in consideration of the covenants and mutual promises contained herein, and upon the terms and conditions set forth herein, and intending to be legally bound hereby, the parties hereby covenant and agree as follows:

## ARTICLE ONE

### Premises and Term

Section 1.01. Grant of Lease. Landlord does hereby demise, lease and let to Tenant and Tenant does hereby let from Landlord, upon and subject to all terms, covenants and conditions herein contained, the Premises. Notwithstanding that the Tenant shall not be occupying the entire Building until Lease Year 3, Landlord shall have no right to use or occupy, or lease to any third party, any portion of the Building, without Tenant's prior written consent in each instance. In addition to the Premises, Tenant shall have the right and license, to place or install temporary modular office and laboratory space on the grounds surrounding the Building, at a location reasonably satisfactory to Landlord, and provided that (i) Tenant has provided notice to Landlord of Tenant's intention and identified the proposed location of such modular office and laboratory space, and (ii) such temporary modular office and laboratory space is permitted under and complies with all applicable federal, state and local laws, regulations and code requirements and all of the terms of this Lease. Tenant and its contractors shall have access to the entire Premises during Lease Year 1, at Tenant's sole risk, for the purposes of commencing construction of improvements in anticipation of Tenant's occupancy and in accordance with Section 4.02 hereof.

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Section 1.02. Term of Lease. The term of this Lease ("Term") shall include a preliminary term, as described in Section 1.02 (a) (the "Preliminary Term"); an initial term, as described in Section 1.02(b) (the "Initial Term") and certain Renewal Terms, as described in Article 14 hereof.

(a) Preliminary Term. The Preliminary Term shall commence on the date this Lease is executed by all parties hereto, and shall terminate on the day prior to the commencement of the Initial Term. All of the terms and conditions set forth in this Lease shall apply during the Preliminary Term except for the provisions of Articles 2 and 3, it being the intention of the parties that during the Preliminary Term, Tenant shall have no obligation to pay Fixed Basic Rent, Additional Rent or any other rent to Landlord. During the Preliminary Term, Tenant shall be permitted to enter the Demised Premises solely for the purpose of performing the Tenant Work (as defined below).

(b) Initial Term. The Initial Term of this Lease shall commence on the later to occur of the following: (i) January 15, 1997 or (ii) a date which is ten (10) days after the Landlord Improvements (as herein defined) have been substantially completed in accordance with Article 4 hereof. The Initial Term as determined above shall be set forth on a written notice from Landlord to Tenant, and the Initial Term of this Lease shall continue for a period of fifteen years, unless this Lease shall be renewed by the Tenant in accordance with Article 14 hereof or sooner terminated as hereinafter provided. (The date upon which the Initial Term commences is referred to hereinafter as the "Rent Commencement Date").

(c) Renewal Terms. Tenant shall have two consecutive options to extend the Initial Term of this Lease, in accordance with the provisions of Article 14 hereof.

(d) Lease Year. The Lease Year 1 of the Term shall commence on the Rent Commencement Date and shall end (i) on the day immediately preceding the first anniversary of the Rent Commencement Date, if the Rent Commencement Date is the first day of the month, or (ii) on the last day of the month in which the first anniversary of the Rent Commencement Date occurs, if the Rent Commencement Date is any day other than the first day of a calendar month. Each subsequent lease year shall be a period of twelve (12) months commencing on the day immediately following the expiration of the prior lease year and expiring on the day immediately preceding the anniversary of the commencement of such lease year.

## ARTICLE TWO

### Rent

Section 2.01. Fixed Basic Rent. Except as hereinafter provided, the minimum annual rent for such Lease Years is in the amounts set forth in the Preamble as "Fixed Basic Rent." The Fixed Basic Rent shall be payable during the Initial Term, in advance, without notice or demand, in equal monthly installments of one-twelfth of the annual amount, on the first day of each month during the Initial Term.

Section 2.02. Additional Rent. All other amounts payable by Tenant hereunder, whether payable to Landlord or to third parties, including without limitation, Taxes pursuant to Section 3.01, insurance premiums, and utility charges, shall be considered additional rent ("Additional Rent") payable by Tenant hereunder. Tenant's obligation for the payment of Additional Rent shall commence upon the Rent Commencement Date.

Section 2.03. Manner of Payment. All amounts payable under Section 2.01 of this Lease, as well as all other amounts payable by Tenant to Landlord under the terms of this Lease, shall be paid, at the office of Landlord set forth above, or at such other place as Landlord shall from time to time designate by notice to Tenant. Tenant's obligation to pay the Fixed Basic Rent and Additional Rent shall survive the expiration of the Term.

Section 2.04. Partial Months. In the event that the Rent Commencement Date is a day other than the first day of a calendar month, Fixed Basic Rent for the month in which the first anniversary of the Rent Commencement Date occurs shall be prorated such that the monthly payment of Fixed Basic Rent for such month shall be equal to the sum of (i) the monthly installment payment that is due during Lease Year 1, as set forth in Section F of the Preamble hereof divided by thirty (30) and multiplied by the number of days in such month prior to the anniversary of the Rent Commencement Date, plus (ii) the monthly installment payment that is due during Lease Year 2, as set forth in Section F of the Preamble hereof, divided by thirty (30) and multiplied by the number of days remaining in such month on and after the Rent Commencement Date.

Section 2.05. Late Charge. Landlord shall be entitled to receive from Tenant a late charge equal to five percent (5%) of the amount of any payment or installment of Fixed Basic Rent and Additional Rent, or any portion thereof, if not received within ten (10) days of the date when due. The acceptance of any such payment by Landlord shall not be deemed to be a waiver of any other rights which Landlord may have under the provisions of this Lease or as provided by law.

### ARTICLE THREE

#### Taxes; Utility Charges

Section 3.01. Tenant's Obligations. Tenant will pay and discharge, punctually as and when the same shall become due and payable, but in any event not later than five (5) business days before any fine, penalty, interest or cost may be added thereto for nonpayment, all real estate taxes water charges and sewer charges (each such tax, water charge and sewer charge hereinafter sometimes called a "Tax").

Section 3.02. Installment Payment. If by law any Tax is payable, or may at the option of the taxpayer be paid, in installments, Tenant may, whether or not interest shall accrue on the unpaid balance thereof, pay the same, and any accrued interest or any unpaid balance thereof, in installments as each installment becomes due and payable, but in any event not later than five (5) business days before any fine, penalty, interest or cost may be added thereto for nonpayment of any installment or interest.

Section 3.03. Apportionment of Taxes; Tenant's Proportionate Share of Taxes. Any Tax, a part of which is within the Term and a part of which is subsequent to the Term, shall be apportioned and adjusted between Landlord and Tenant as of the expiration of the Term so that Landlord shall pay the amount of the Tax due after the expiration of the Term, and Tenant shall pay the remainder thereof. With respect to any Tax for public improvements or benefits which by law is payable in installments, a part of which is within the Term and a part of which is subsequent to the Term, Landlord shall pay the installments thereof which become due and payable with respect to periods of time subsequent to the expiration of the Term, and Tenant shall pay all such installments which become due and payable with respect to periods of time prior to the expiration of the Term.

Section 3.04. Receipts. Tenant shall furnish to Landlord reasonable evidence of payment of any Tax, including official receipts from the appropriate taxing authority evidencing payment or other proof satisfactory to Landlord, not later than five (5) business days prior to the date that such Tax would have become delinquent or within ten (10) days after receipt by Tenant of such receipt or other evidence from the tax authority, whichever is earlier.

Section 3.05. Right to Contest Taxes. Notwithstanding anything to the contrary herein contained, if Tenant deems any Tax excessive or illegal, Tenant, upon prior written notice to Landlord, may defer payment thereof so long as (a) the validity or the amount thereof is contested by Tenant with diligence and in good faith, and (b) no tax sale or other action in connection therewith against the Premises or Landlord is threatened. So long as Tenant is not in default under this Lease, and in good faith and by appropriate legal action shall contest the validity of any Tax, and shall have established by deposit of cash with Landlord, or other securities satisfactory to Landlord, a reserve for the payment thereof in such amount as shall be subject to such contest, the Tenant shall not be required to pay the contested Tax or produce the required receipt while the reserve is maintained and so long as the contest that operates to prevent collection is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to Tenant. Any such cash held in reserve with Landlord shall be deposited by Landlord with a federally insured financial institution in a separate escrow or trust account, and such funds shall not be co-mingled with other monies of the Landlord.

Section 3.06. Taxes and Impositions Payable by Landlord. Tenant shall not be required to pay any of the following Taxes which shall be imposed against Landlord by any governmental authority, whether federal, state, county, city, municipal, or otherwise:

- (a) any estate, inheritance, succession, transfer, legacy or gift tax which may be imposed upon or with respect to any transfer of Landlord's interest in the Premises;
- (b) any capital stock tax or other tax imposed against Landlord for the privilege or franchise of doing business; and
- (c) any federal, state or local income tax levied upon or against the income of Landlord.

Section 3.07. Utilities. Tenant shall timely pay or cause to be paid all charges for gas, electricity, light, heat, power, water, telephone or other communication service or other utility or service used, rendered or supplied to, upon or in connection with the Premises throughout the Term.

Section 3.08. Insurance. Tenant shall pay or cause to be paid all insurance premiums for the coverages required to be purchased and maintained by Tenant in accordance with Article 10 of this Lease.

## ARTICLE FOUR

### Construction of Improvements

Section 4.01. Landlord Improvements. Landlord, at Landlord's sole cost and expense, shall cause to be completed upon the Premises in accordance with all applicable federal, state and local laws, regulations, and code requirements, including all applicable zoning, building, electrical, health, safety, or fire code requirements, the code requirements and standards established in the most recent

editions of "The BOCA National Building Code," and the federal law known as The Americans with Disabilities Act ("ADA") (collectively, the "Laws") affecting the Premises, and in a good and workmanlike manner, the following work (collectively, the "Landlord Improvements"), all in accordance with the plans and specifications attached hereto as Exhibit "B-2" (the "Plans and Specifications for Landlord Improvements" or the "Plans and Specifications"):

(a) demolition of all interior improvements currently existing in the Premises, including but not limited to, the removal of any asbestos containing materials, polychlorinated biphenyls, underground storage tanks, and any "Hazardous Substances" or "Hazardous Waste" as defined under any "Environmental Laws" (defined below), and all partitions, ceiling and floor coverings, walls (except for structural or load bearing walls), and the removal of the rooftop HVAC units;

(b) installation of new asphalt paving and striping of the existing parking lot, entrances and exits resulting in a total of 360 parking spaces on the Premises;

(c) installation of new exterior lighting;

(d) landscaping around the entire Building;

(e) painting and stucco repair and/or replacement of the entire exterior of the Building; and

(f) replacement of the entire roof on the Building; and

Section 4.02. Tenant Work Tenant shall cause to be completed upon the Premises in accordance with applicable Laws, those improvements, other than the Landlord improvements, which are necessary or desirable to Tenant in order to make the Premises suitable for Tenant's use and occupancy ("Tenant Work"). Tenant Work shall be subject to the following conditions:

(a) Not later than ten (10) days prior to commencing the Tenant Work, Tenant shall provide Landlord with plans and specifications of the Tenant Work, and the identity of the general contractor engaged by Tenant to perform the Tenant Work. Attached to this Lease as Exhibit "B-2" are any plans and specifications of the Tenant Work that Tenant has completed prior to the date hereof.

(b) Tenant or Tenant's contractor shall, throughout the period of construction, procure and maintain builder's risk insurance coverage in an amount sufficient to cover the cost of Tenant Work, and naming the Tenant and Landlord as additional insureds, as their interests may appear.

(c) Tenant shall promptly pay and discharge all costs, expenses, damages and other liabilities which may arise in connection with or by reason of the Tenant Work.

(d) Tenant shall not permit the filing of any mechanic's lien and, within thirty (30) days after written notice of its existence thereof from Landlord shall discharge or bond over any mechanic's lien for material or labor claimed to have been furnished to the Premises on Tenant's behalf (except for work contracted for by Landlord). Prior to commencing any of the Tenant Work, Tenant shall (i) file waivers on behalf of each contractor waiving such contractor's right to file for or claim a mechanic's lien under Pennsylvania's Mechanic's Lien Law, and (ii) provide to Landlord a time-stamped copy of such filings.



(e) The Tenant Work shall be completed in accordance with the plans and specifications and construction schedule prepared by Tenant and attached hereto or provided to Landlord, subject to changes as may be approved by Tenant pursuant to a written change order signed by Tenant. Tenant shall provide Landlord with a copy of any change orders approved by Tenant, and any modification or revision to the plans and specifications resulting therefrom prior to commencing any change in the Tenant Work pursuant thereto, unless the change is of an urgent nature or if the prior delivery of such documentation to Landlord is otherwise not reasonably practicable under the circumstances and in such cases Tenant shall provide a copy of any such change orders, and any such modifications to plans and specifications to the Landlord, promptly following the execution of any such change orders or the completion of any such revised plans and specifications.

(f) The Tenant Work will not weaken or impair the structural integrity or lessen the value of the Premises or any part thereof.

(g) Not later than two (2) business days prior to commencement of the Tenant Work, Tenant shall obtain, at Tenant's sole cost and expense, all permits and approvals necessary for construction of the Tenant Work and shall provide a copy of same to Landlord promptly upon receipt.

Section 4.03. Time for Completion. Subject only to delays caused by Tenant's actions, or delays caused by events wholly beyond the control of Landlord, the Landlord Improvements described in clauses (a) and (f) (except with respect to the portion of the roof above the office spaces in the Building) of Section 4.01 shall be substantially completed on or before the January 15, 1997. The Landlord Improvements pertaining to the removal and replacement of the roof above the office spaces in the Building shall be finally completed by no later than January 31, 1997. The Landlord Improvements described in clauses (b), (c), (d) and (e) of Section 4.01, and any minor or cosmetic repairs that have not been completed by January 15, 1997, shall be finally completed by no later than May 31, 1997.

For purposes of Section 1.02 (b), and the last sentence of Section 4.04, the Landlord Improvements shall be deemed "substantially completed" when the Landlord Improvements described in clauses (a) and (f) (except with respect to the portion of the roof above the office spaces in the Building) have been completed, except for any minor or cosmetic repairs.

Section 4.04 Delays in Substantial Completion. If the Landlord is delayed for reasons other than those described in this Section 4.03, and fails to achieve substantial completion of the Landlord Improvements, or final completion of the Landlord Improvements, within the times provided herein, then the Tenant's sole and exclusive remedy for such failure shall be to recover from the Landlord the sum of \$150.00 for each such calendar day substantial completion or final completion, as the case may be, is so delayed by Landlord and provided that such delay continues for five (5) business days following written notice by Tenant of such failure. The parties acknowledge and agree that it would be extremely difficult and impracticable under the presently known and anticipated circumstances to ascertain and fix the actual damages that the Tenant would incur should Landlord delay in achieving completion of the Landlord Improvements within the times provided herein, and that the aforesaid stipulated liquidated damages is not punitive, but represents an acceptable sum to compensate Tenant for all such damages and losses. In accordance with Section 1.02(b), Tenant shall have no obligation to pay Fixed Basic Rent and Additional Rent or other charges payable by Tenant hereunder, and all such rent and other charges shall be abated, and the Rent Commencement Date shall not occur, until the Landlord Improvements have been substantially completed.

Section 4.05. Signs. Tenant shall not place, erect, construct, or install any signs on the exterior of the Premises or Building, except in accordance with applicable Laws. Tenant shall provide Landlord with a copy of all plans and specifications pertaining to any such exterior signs. Tenant shall be solely responsible for all costs and expenses associated with the construction or installation of any signs installed by Tenant. Any signs erected by Tenant shall remain the property of Tenant, who shall have the right to remove same upon the expiration of the Term, provided that the Premises shall be restored to its present condition, reasonable wear and tear excepted.

## ARTICLE FIVE

### Use and Compliance With Laws; Environmental Covenants

Section 5.01. Use of Premises. Tenant shall use and occupy the Premises as space for its offices, laboratories, and warehouse use in connection with the conduct of Tenant's business of manufacturing, testing and analyzing, packaging, and distribution of pharmaceutical products, and in support of Tenant's clinical research divisions, in accordance with Section 5.02 hereof, and for no other purpose. Tenant shall not place any weights in any portion of the Premises in excess of the floor load limits, as estimated by Tenant's engineer.

Section 5.02. Compliance with Law. Tenant shall comply in all material aspects with all Laws respecting the occupancy, use, enjoyment, maintenance, management, improvement, repair, or alteration of the Premises, provided, however, that such obligation shall not include making any structural or system repairs to the Building, except for the Tenant Work or structural or system repairs to the Building required to correct damage caused by Tenant or Tenant's invitees. Tenant shall not be deemed to have violated this covenant solely because of non-compliance or alleged non-compliance with any regulation, order, direction or rule issued by the U.S. Food and Drug Administration, or any state agency or department with jurisdiction over Tenant's business operations, provided any such non-compliance does not impair or affect, in Landlord's reasonable judgment, in any material aspect, Tenant's ability to perform its other obligations under this Lease.

Section 5.03. Right to Contest. Tenant shall have the right, upon prior written notice to Landlord, to contest by appropriate legal proceedings, without cost or expense to Landlord, the validity of any Laws so long as (a) such contest is prosecuted in good faith, and (b) no sale or other action in connection therewith is threatened against the Premises or Landlord. If at any time, such a sale or other action against the Premises or Landlord is threatened, then Tenant either (i) shall comply with the Laws, or (ii) post such bonds or other security with the court or appropriate governmental authority in either event in sufficient time and amount to prevent such threat. Tenant agrees to indemnify and hold harmless Landlord against any and all liability, loss, damage, cost and expense which Landlord may sustain during the Term by reason of Tenant's contest, including but not limited to any penalties which may be levied or assessed against the Landlord or the Premises. In the event that any such contest by Tenant involves the dispute over the payment of any fine, penalty, or other charge, and so long as Tenant is not in default under this Lease, and in good faith and by appropriate legal action shall contest the validity of any such fine, penalty or charge, and shall have established by deposit of cash with Landlord, or other securities satisfactory to Landlord, a reserve for the payment thereof in such amount shall be subject to such contest, the Tenant shall not be required to pay the contested item or produce the required receipt while the reserve is maintained and so long as the contest that operates to prevent collection is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to Tenant. Any such cash held in reserve with Landlord shall be



deposited by Landlord with a federally insured financial institution in a separate escrow or trust account, and such funds shall not be co-mingled with other monies of the Landlord.

## ARTICLE SIX

### Representations and Warranties

Section 6.01. Landlord's Representations and Warranties. Landlord hereby represents and warrants to Tenant as follows:

(a) Landlord has or shall obtain good and indefeasible fee title to the Premises, subject only to those matters set forth on Exhibit "C" attached hereto (the "Permitted Exceptions") which matters do not adversely interfere with or prohibit Tenant's proposed use of the Premises. Tenant's obligations under this Lease are contingent upon Landlord first acquiring such title to the Premises within thirty (30) days of the date of this Lease. In the event that Landlord fails to obtain such title within such thirty (30) day period Tenant may elect to terminate this Lease upon written notice to Landlord of such election. Notwithstanding whether Tenant elects to terminate, Landlord shall indemnify, defend, and hold Tenant harmless from and against any liability, loss, cost and expense incurred by Tenant as a result of Landlord failing to acquire such title as aforesaid.

(b) -There is no claim, litigation, proceeding or governmental investigation pending or, so far as is known to you, threatened, against or relating to the Premises, nor is there any basis known to Landlord for any such action.

(c) The Premises comply, and upon completion the Landlord Improvements and Tenant Work, will comply, with all Laws, and are not in violation of any covenants, conditions or restrictions affecting the Premises.

(d) There are no outstanding violations of any Laws respecting the Premises. Landlord covenants that it shall be solely responsible for alterations, construction, and improvements to the Landlord Improvements, as may be required by any applicable Laws.

(e) The Leased Premises shall be ready for use and occupancy by Tenant, and all systems and improvements, including, but not limited to the roof, exterior walls, foundation, structural frame, water supply system, sewage disposal system, and electrical system shall be in good operating condition and repair at the Rent Commencement Date, except to the extent that any such systems or improvements are altered or modified by the Tenant Work.

(f) To the best of Landlord's knowledge, based on the following environmental reports: (i) "Facility Closure Assessment and Remediation Activities Report Tele-Dynamics Division of Hamilton Standard Fort Washington, Pennsylvania," submitted by Baker Environmental, Inc., dated February, 1993," (ii) "Environmental Site Assessment Update of the Tele-Dynamics Facility Fort Washington, Pennsylvania," prepared by Baker Environmental, Inc., dated April, 1995," (iii) "(Draft) Phase I Environmental Site Assessment of the former Tele-Dynamics Facility Fort Washington, PA, TSD Job No. CRW96003" prepared by TSD Environmental Services, Inc., dated April, 1996, and (iv) "Underground Storage Tank Closure Assessment at the Hamilton Standard Division of UTC Tele-Dynamics Facility Ft. Washington, Pennsylvania," prepared by Baker Environmental, Inc., dated February, 1993," (collectively, the reports described in clauses (i) through (iv) are referred to herein as the "Environmental

Assessment Reports"), and without any further investigation by Landlord, (A) neither Landlord, nor any prior owner, tenant, or operator of the Building has performed any activities which would subject the Building to liability under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. ("CERCLA"), or any other environmental or quasi-environmental law, statute, act, rule, regulation or ordinance enacted by a municipal, county, state or federal governmental entity or agency (all of the foregoing along with any and all amendments thereof and supplements thereto, are hereinafter referred to individually as an "Environmental Law" and collectively as the "Environmental Laws"); (B) the Building is not now and has never been in violation of any Environmental Law; and (C) neither Landlord, nor any prior owner, tenant, or operator of the Building have used the Building to refine, produce, store, handle, transfer, process, transport or dispose of any "Hazardous Substances" or "Hazardous Waste" as defined under any Environmental Laws, except strictly in accordance with all such Environmental Laws. Landlord acknowledges that Tenant has not undertaken any independent environmental assessment of the Premises, and has executed and accepted the Lease in reliance upon the Environmental Assessment Reports provided by Landlord and above representations and warranty of Landlord.

Section 6.02. Brokerage Commissions. Landlord and Tenant warrant to each other that neither has dealt with any broker or other intermediary with respect to this transaction or the Premises in any manner which would create a right to a commission other than with the Brokers, whose compensation Landlord has separately agreed to pay. Landlord authorizes and directs Preferred Real Estate Advisors, Inc. to share its commissions on the rent paid by Tenant to Landlord with Julien J. Studley, Inc., acting as agent for Tenant.

## ARTICLE SEVEN

### Indemnification

Section 7.01. Tenant's Indemnity. Subject to Section 10.05 hereof, Tenant will protect, indemnify and hold harmless Landlord and its agents, affiliates, subsidiaries, parent companies and the officers and directors thereof, from and against any and all claims, actions, damages, liability and expense (including fees of attorneys, investigators and experts) in connection with loss of life, personal injury or damage to property in or about the Premises or arising out of the occupancy or use of the Premises by Tenant or its Agents or occasioned wholly or in part by any act or omission of Tenant or its Agents, whether during the Term, except to the extent such loss, injury or damage was caused by the negligence or willful misconduct of Landlord or its agents. In case any action or proceeding is brought against Landlord and/or its agents, affiliates, parent companies, officers, directors by reason of the foregoing, Tenant, at its expense, shall resist and defend such action or proceeding, or cause the same to be resisted and defended by counsel (reasonably acceptable to Landlord and its Agents) designated by the insurer whose policy covers such occurrence or by counsel designated by Tenant and approved by Landlord. Tenant's obligations pursuant to this Section 7.01 shall survive the expiration or termination of this Lease.

Section 7.02. Landlord's Indemnity. Subject to Section 10.05 hereof, Landlord will protect, indemnify and hold harmless Tenant and its agents, affiliates, subsidiaries, parent companies, and the officers and directors thereof, from and against any and all claims, actions, damages, liability and expense (including fees of attorneys, investigators and experts) in connection with loss of life, personal injury or damage to property in or about the Premises occasioned wholly or in part by any act or omission of Landlord or its agents, during the Term,

except to the extent such loss, injury or damage was caused by the negligence or willful misconduct of Tenant or its agents. In case any action or proceeding is brought against Tenant and/or its agents, affiliates, parent companies, officers, directors by reason of the foregoing, Landlord, at its expense, shall resist and defend such action or proceeding, or cause the same to be resisted and defended by counsel (reasonably acceptable to Tenant and its agents) designated by the insurer whose policy covers such occurrence or by counsel designated by Landlord and approved by Tenant. Landlord's obligations pursuant to this Section 7.02 shall survive the expiration or termination of this Lease. Landlord agrees that Landlord shall be solely responsible for and shall indemnify and defend and save Tenant harmless from any loss, damage, or liability caused by the presence of any asbestos containing materials, polychlorinated biphenyls, underground storage tanks, or any "Hazardous Substances" or "Hazardous Waste" that were refined, produced, stored, handled, transferred, processed, transported or disposed of on the Premises prior to the Rent Commencement Date.

## ARTICLE EIGHT

### Maintenance and Repairs

Section 8.01. Tenant's Obligations. Subject to Landlord's obligations set forth in this Lease, Tenant shall, throughout the Term, keep the Premises in good working order and condition, at Tenant's sole cost and expense, including all driveways, parking areas, curbs, landscaped areas, and sidewalks, and other improvements now or hereafter erected thereon, including but not limited to the roof, HVAC equipment, finishes, plumbing, lighting and other improvements now or hereafter located upon the Building, or any part of the Premises. Tenant shall, at Tenant's sole cost and expense, during the entire Term, engage a reputable and licensed mechanical contractor to provide routine preventive maintenance service on the heating, ventilation and air conditioning equipment ("HVAC") pursuant to a written service contract, and shall provide a copy of same to Landlord promptly following receipt of same. Tenant shall also provide Landlord with a list of contractors whom Tenant has engaged pursuant to a written agreement for scheduled maintenance or routine repairs of the Premises, or the systems or equipment therein. At the expiration of the Term, Tenant shall deliver the Premises in broom clean condition, reasonable wear and tear excepted.

Section 8.02. Landlord's Obligations. Landlord shall be responsible for and covenants and agrees to maintain in good condition all structural and weight bearing elements of the Building, and shall make all structural repairs to the Building, including but not limited to the external walls, weight-bearing elements and base flooring (below floor covering). Notwithstanding anything to the contrary contained in this Section 8.02, Landlord shall not be responsible for repairs or replacements necessary to correct damage caused by Tenant or Tenant's invitees.

Section 8.03 Access to Premises. Landlord may enter upon the Premises during normal business hours, upon 48 hours prior verbal notice to Tenant's designated representative (except no notice shall be required in the case of emergency), and accompanied by an employee of Tenant, and further provided that the individual or individuals seeking access on behalf of Landlord shall have executed a confidentiality agreement satisfactory to Tenant, for the following purposes:

- (a) to inspect the condition of the Premises;

(b) to make repairs to the Building or Premises pursuant to the terms of the Lease, provided that Landlord shall make every reasonable effort to minimize any interference with Tenant's use of the Premises, and so long as Landlord is using reasonable efforts to minimize interference, there will be no liability or abatement of Fixed Basic Rent or Additional Rent while such repairs are being undertaken, and

(c) to show the Premises to prospective purchasers, mortgagees, or other persons having a legitimate interest in viewing the same, and, at any time within nine (9) months prior to the expiration of the Term for the Premises, to brokers or persons wishing to rent the Premises;

Section 8.04. Landlord as Building Manager Manager's Fee. Tenant shall pay Landlord, or at Landlord's direction, to Landlord's agent, a fee of \$400.00 per month, as Additional Rent in accordance with Section 2.02 hereof (the "Manager's Fee").

## ARTICLE NINE

### Alterations

Section 9.01. Structural Alterations. Except as provided in Section 9.02 hereof, and other than the Tenant Work, Tenant will make no other structural alterations to the Premises or any part thereof, without the prior written consent of Landlord, which consent will not be unreasonably withheld, conditioned, or delayed. Landlord shall not withhold its consent unless such structural alterations would materially change the character, appearance or use of the Premises, or would weaken or impair the structural integrity or lessen the value of the Premises or any part thereof. Any such permitted alterations shall be performed in accordance with plans and specifications, and a construction schedule, previously approved in writing Landlord. Nevertheless, Tenant shall be permitted to install roof top HVAC units in accordance with plans and specifications previously approved in writing by Landlord. The location of such roof top HVAC units shall be subject to Landlord's reasonable discretion, and such installation shall be performed by a licensed mechanical contractor, which contractor shall be subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Any such structural alterations to the Premises shall be subject to the same conditions as apply to the Tenant Work pursuant to Section 4.02 hereof.

Section 9.02. Non-Structural Alterations. Tenant may, at its sole cost, and without the prior written consent of Landlord, make such interior nonstructural alterations, additions, and improvements in and to the Premises as it may deem desirable for its use, provided that Tenant notifies Landlord of Tenant's intention to perform such alterations, additions and improvements and provides Landlord with a copy of any plans and specifications relating thereto. Any such non-structural alterations to the Premises shall be subject to the same conditions as apply to the Tenant Work pursuant to Section 4.02 hereof.

Section 9.03 Mechanics' Liens. Tenant shall not, in the making of any repairs or alterations pursuant to the provision of this Lease, suffer or permit any mechanic's, laborer's or materialmen's lien to be filed against the Premises, Building, or any part thereof by reason of labor or materials supplied or claimed to have been supplied to Tenant; and if any such lien shall be filed, Tenant, within forty-five days after notice of filing, shall cause it to be discharged of record. In the event that Tenant fails to discharge any such lien as aforesaid, then Landlord may, but shall not be required to, cause such lien to be discharged. Any such payments or expenses incurred by

Landlord in connection therewith, shall constitute Additional Rent hereunder and shall be due and payable with the next monthly installment of Fixed Basic Rent. Tenant shall provide Landlord with copies of the praecipe or other record evidencing the discharge of such lien promptly following receipt of same.

Section 9.04. Status of Improvements: "As Built" Drawings. Any alterations or improvements made pursuant to this Lease shall remain on the Premises at the expiration of the Term, unless Landlord and Tenant shall agree otherwise in writing; provided, however, that Tenant shall, at its option, have the right to remove Tenant's trade fixtures, equipment, furnishings or personal property, provided that if damage is caused by such removal, the damage shall be repaired by Tenant by the expiration of the Term.

## ARTICLE TEN

### Insurance and Damage

Section 10.01. Insurance. Tenant, at Tenant's sole cost and expense, shall keep or cause the Premises to be kept continuously insured during the Term, under policies providing the following insurance coverages: (i) commercial general liability insurance on an occurring basis with a combined single limit for bodily injury and property damage of not less than \$2,000,000.00, including the broad form general liability endorsement, contract liability, and products liability coverage; and (ii) a policy of standard fire, extended coverage and special extended coverage insurance (all risks), including a vandalism and malicious mischief endorsement, in an amount equal to the full replacement value of the Premises, new and without deduction for depreciation of fixtures, furniture and improvements. On or before the Rent Commencement Date, Tenant shall provide Landlord with satisfactory evidence that such insurance is in full force and effect or effectively renewed and that the insurance premiums for such insurance have been paid for the first year of the term. Tenant's obligation to carry or maintain any insurance required to be maintained by Tenant under the Lease may be satisfied by Tenant by providing such coverages under Tenant's existing blanket insurance policy. Such liability policy shall name Landlord as an additional insured, and such casualty policy shall name Landlord as the loss payee, and shall provide for at least thirty (30) days' prior notice of cancellation or modification to Landlord. Upon the execution of this Lease, Tenant shall deposit certificates evidencing such insurance coverages with Landlord, and thereafter shall deposit with Landlord certificates evidencing renewal of such coverages at least fifteen (15) days prior to the expiration thereof. In the event that Tenant shall fail to maintain any such required insurance coverages during the Term, Landlord may, but shall not be obligated to, procure and obtain such insurance coverages and Landlord's costs for such insurance shall constitute Additional Rent hereunder and shall be due and payable with the next monthly installment of Fixed Basic Rent.

### Section 10.02. Damage or Casualty.

(a) In case the Premises or any portion thereof shall be totally or partially damaged or destroyed by fire or by any other casualty whatsoever, then Landlord and Tenant shall proceed with reasonable promptness, and in accordance with paragraph (c) below, to repair and restore the Premises to at least as good a condition as that which existed immediately prior to such fire or other casualty and during such repair period, there shall be an abatement of rent. In the event Landlord receives any insurance proceeds from the property insurance maintained by



Tenant pursuant to Section 10.01, Landlord shall turn such proceeds over to Tenant for the purpose of making such repairs.

(b) In the event that any of the insurance monies paid by the insurance companies to Tenant shall remain after the completion of such repairs, restoration or reconstruction, the excess shall be paid to or retained by Tenant, as Tenant's property. In the event that the proceeds of any insurance policies are insufficient to restore the Premises to the condition that they were in prior to the occurrence of the casualty, either party hereto may terminate this Lease upon ten (10) days prior written notice to the other party of such election, and the Lease shall terminate on the date set forth in such notice unless the other party shall elect and agree to pay any short fall necessary to effect the required repairs, restoration or reconstruction, and in which case the insurance proceeds shall be apportioned between the parties hereto in the same proportion as the cost of the Tenant Work bears to the aggregate of the cost of the Landlord Improvements plus (i) the actual cost to Landlord to acquire the Building (exclusive of the land and appurtenances) or (ii) \$1,800,000, whichever is less.

(c) All repairs, restoration and reconstruction to the interior of the Building, or other portions of the Premises comprising the Tenant Work shall be performed by Tenant subject to the conditions set forth in Section 4.02 and Section 9.01 hereof. All repairs, restoration and reconstruction to the exterior of the Building, or other exterior improvements to the Premises shall be performed by Landlord. The parties shall cooperate with one another and shall have mutual responsibility for the adjustment of all insurance claims.

Section 10.03. Cooperation in Actions. Landlord and Tenant each will cooperate with the other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and each will execute and deliver to such other party such instruments as may be required to facilitate the recovery of any insurance monies.

Section 10.04. Notice of Casualty. Tenant shall give prompt written and verbal notice to Landlord with respect to all fires or other casualties occurring upon the Premises.

Section 10.05. Waiver of Subrogation: Rights Under Insurance Policies. Each of the parties hereto hereby release the other, to the extent of the releasing party's insurance coverage, from any and all liability for any loss or damage which may be inflicted upon the Premises of such party even if such loss or damage shall be brought about by the fault or negligence of the other party, its agents or employees; provided, however, that this release shall be effective only with respect to loss or damage occurring during such time as the appropriate policy of insurance shall contain a clause to the effect that this release shall not affect said policy or the right of the insured to recover thereunder. If any policy does not permit such a waiver, and if the party to benefit therefrom requests that such a waiver be obtained, the other party agrees to obtain an endorsement to its insurance policies permitting such waiver of subrogation if it is available and if such policies do not provide therefor. If an additional premium is charged for such waiver, the party benefiting therefrom, if it desires to have the waiver, agrees to pay to the other the amount of such additional premium promptly upon being billed therefor.

## ARTICLE ELEVEN

Condemnation

Section 11.01. Condemnation. In the event that the Premises, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain or by agreement between Landlord, Tenant and those authorized to exercise such right (hereinafter collectively called "Condemnation Proceedings"), Tenant shall have the right to make a claim against the condemnor for moving expenses, business dislocation damages or damages to Tenant's business and personal property owned by Tenant, including but not limited to those items constituting Tenant Work. The parties agree to execute any and all further documents that may be required in order to facilitate collection of any such award or awards.

Section 11.02. Total Condemnation. If title to the fee of the whole or materially all of the Premises shall be taken by Condemnation Proceedings, for any public or quasi-public use, this Lease shall cease and terminate, and all Fixed Basic Rent, Additional Rent and other charges paid or payable by Tenant hereunder shall be apportioned, as of the date possession of the Premises must be delivered to the condemning authority, and the total award, except for any award specifically to Tenant as described in Section 11.01 above, shall be retained by Landlord. For the purposes of this Section, a taking of the whole or materially all of the Premises shall be deemed to have occurred if the portion of the Premises not so taken, in Landlord's reasonable, good faith judgment, cannot be reconstructed or repaired so as to constitute a facility usable by Tenant for the purposes which the Premises were being used by Tenant immediately prior to such taking.

Section 11.03. Partial Condemnation. Unless otherwise required by any mortgage lender of Landlord, if at any time during the term of this Lease, title to less than the whole or materially all of the Premises shall be taken in Condemnation Proceedings, all the award or proceeds collected by Landlord pursuant to Section 11.01 hereof shall be held by Landlord and applied and paid over toward the cost of demolition, repair and restoration, substantially in the same manner and subject to the same conditions as those provided in Section 10.03 hereof with respect to insurance and other monies and provided no Event of Default shall have occurred. Any balance remaining in the hands of Landlord after payment of such costs of demolition, repair and restoration as aforementioned shall be the sole property of Landlord. This Lease shall continue in full force and effect, provided however, the Fixed Basic Rent shall be reduced by the proportion that the square footage of the Building taken in condemnation bears to the total square footage of the Building.

## ARTICLE TWELVE

Default

Section 12.01. Events of Default; Termination. The occurrence of each of the following shall be an "Event of Default" hereunder:

(a) if Tenant shall make an assignment of a material portion of its assets for the benefit of its creditors, or if a material portion of Tenant's assets shall become subject to a levy or attachment by any judgment creditors or governmental authorities and such attachment or levy is not discharged or dissolved within forty-five (45) days after the date of such attachment or levy, or

(b) if Tenant indicates an intention to file a petition or if any petition shall be filed by or against Tenant in any court, whether or not pursuant to any statute of the United States or of any

State, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and in the case of an involuntary bankruptcy petition such proceedings shall not be dismissed within ninety (90) days after the institution of the same; or

(c) if, in any proceeding, a receiver or trustee be appointed for all or any portion of Tenant's property, and such receivership or trustee shall not be vacated or set aside within ninety (90) days after the appointment of such receiver or trustee; or

(d) if Tenant shall fail to pay any installment of Fixed Basic Rent or Additional Rent, or any part thereof, when the same shall become due and payable for a period of ten (10) business days after written notice to Tenant from Landlord; or

(e) if Tenant shall abandon the Premises, without the prior consent of Landlord, by removing all or substantially all of Tenant's furniture, equipment and personal property from the Premises, provided that Tenant shall also be delinquent in the payment of Fixed Basic Rent or fail to obtain any additional insurance coverage that may be required by Tenant's insurance carrier in order to insure a vacant building; or

(f) if Tenant shall fail to perform or observe any other material provision, condition or requirement of this Lease (not hereinbefore in this Section 12.01 specifically referred to) on the part of Tenant to be performed or observed, and such failure shall continue for thirty (30) days after notice thereof from Landlord to Tenant, or, if such Event of Default is of such a nature that it cannot, with due diligence, be cured within a period of thirty (30) days, if Tenant shall have failed to commence the curing of such default within the period of thirty (30) days referred to above and shall thereafter fail to continue with all due diligence to complete the curing of such default and completes such cure in any event within ninety (90) days after notice thereof.

Section 12.02. Remedies. Upon the occurrence of an Event of Default, and at any time thereafter, Landlord shall have the following rights and may elect any one or more of the following remedies:

(a) To accelerate the whole or any part of the Fixed Basic Rent for the remainder of the Term (the "Accelerated Rent"), which Accelerated Rent shall be discounted to present value on the basis of a discount rate equal to the prime rate offered by CoreStates Bank, N.A., applied and calculated on the date of receipt by Landlord of such Accelerated Rent; and shall be deemed due and payable as if, by the terms and provisions of this Lease, such Accelerated Rent was on that date payable in advance.

(b) Without waiving Landlord's right to recover the Accelerated Rent as herein provided, Landlord may re-enter the Premises, and, at the option of Landlord, remove all persons and all or any property therefrom, either by summary dispossession proceedings or by any suitable action or proceeding at law or by force or otherwise, without being liable for prosecution or damages therefor, and repossess and enjoy the Premises. Upon recovering possession of the Premises by reason of an Event of Default, Landlord may, at Landlord's option, either terminate this Lease or make such alterations and repairs as may be necessary in order to relet the Premises and relet the Premises or any part or parts thereof, either in Landlord's name or otherwise, for a term or terms which may, at Landlord's option, be less than or exceed the period which would otherwise have constituted the balance of the Term of and at such rent or rents and upon such other term and conditions as in Landlord's sole discretion may seem advisable and to such person or persons as may in Landlord's discretion seem best; upon each such reletting all rents received by Landlord from such reletting shall



be applied: first, to the payment of any costs and expenses of such reletting, including brokerage fees and attorney's fees and all costs of such alterations and repairs; second, to the payment of any indebtedness other than Fixed Basic Rent due hereunder from Tenant to Landlord; third, to the payment of Additional Rent due and unpaid hereunder; and the residue, if any, shall be held by Landlord and applied in payment of future rent as it may become due and payable hereunder. If such rentals received from such reletting during any month shall be less than that to be paid during that month by Tenant, Tenant shall pay any such deficiency to Landlord. Such deficiency shall be calculated and paid monthly. No such re-entry or taking possession of the Premises or the making of alterations or improvements thereto or the reletting thereof shall be construed as an election on the part of Landlord to terminate this Lease unless written notice of such intention be given to Tenant. Landlord shall in no event be liable in any way whatsoever for failure to relet the Premises, or in the event that the Premises or any portion thereof is relet, for failure to collect the rent thereof under such reletting. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach.

(c) Without waiving Landlord's right to recover the Accelerated Rent as herein provided, Landlord may terminate the Lease and thereupon all rights of Tenant under this Lease shall expire and terminate and Tenant shall forthwith quit and surrender possession of the Premises in the condition specified in Section 8.01 hereof.

Section 12.03. Non-Waiver. No waiver by Landlord of any breach by Tenant or any of Tenant's obligations, agreements or covenants herein shall be a waiver of any subsequent breach, nor shall any forbearance by Landlord to seek a remedy for any breach by Tenant be a waiver by Landlord of any rights and remedies with respect to any subsequent breach.

Section 12.04. Rights and Remedies Cumulative. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy provided herein or by law, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

Section 12.05. Waiver of Trial by Jury. LANDLORD AND TENANT HEREBY IRREVOCABLY AGREE TO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OF OR OCCUPANCY OF THE PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE OR REMEDY.

## ARTICLE THIRTEEN

### Quiet Enjoyment; Subordination

Section 13.01. Quiet Enjoyment. Tenant, upon paying the rent herein reserved, and performing and observing the covenants, conditions and agreements hereof upon the part of Tenant to be performed and observed, shall and may peaceably hold and enjoy the said Premises during the term hereof, without any interruption or disturbance from Landlord or anyone claiming by, through or under Landlord, subject, however, to the terms of this Lease and subject to all matters which now affect the Premises and subject to the rights of Landlord's mortgage lenders under all present and future mortgages of Landlord covering the Premises. This covenant shall be construed as running with the

land to and against subsequent owners and successors in interest, and is not, nor shall it operate or be construed as, a personal covenant of Landlord, except to the extent of Landlord's interest in said Premises and only so long as such interest shall continue, and thereafter this covenant shall be binding only upon such subsequent owners and successors in interest, to the extent of their respective interests, as and when they shall acquire the same, and only so long as they shall retain such interest.

Section 13.02. Subordination, Non-Disturbance and Attornment. This Lease, and Tenant's rights hereunder, including, without limitation the Option granted pursuant to Article 15 hereof, shall not be subject or subordinate to the lien of any mortgage, ground lease, or other encumbrance, encumbering the Premises, unless Tenant and such encumbrancer execute an agreement, certificate or other writing, which contains a provision that so long as Tenant shall not be in default under the terms of the Lease, the Lease, the Option and all of Tenant's other rights hereunder, and Tenant attorns to such encumbrancer, the Lease shall remain in full force and effect regardless of any event of foreclosure or termination upon any such mortgage, ground lease or other encumbrance. Such agreement shall also contain a provision, which obligates Tenant, notwithstanding any claim, defense or right of setoff that otherwise may be available to Tenant in the event that Landlord is in default under the terms of this Lease, to make payments of Fixed Basic Rent to such encumbrancer, and provides any claim, defense or right of setoff that Tenant may have under applicable law would only apply to such portion of the Fixed Basic Rent that exceeds the amount of Landlord's regular monthly installment payment of debt service to such encumbrancer.

Section 13.03: Tenant Estoppel Certificate. Tenant shall, within ten (10) days following request of Landlord, execute an estoppel certificate or similar writing, certifying to Landlord's mortgagee or purchaser such facts, if true, and agreeing to such notice provisions and other matters as such mortgagee or purchaser may reasonably require in connection with Landlord's present or future financing or sale of the Building.

Section 13.04. Landlord's Lien Waiver. Within thirty (30) days following the written request of Tenant, Landlord shall execute a waiver or similar writing, as may be reasonably required in connection with any present or future financing provided to Tenant by any creditor, in order to evidence that Landlord waives, releases and relinquishes any and all rights (including the right to a landlord's lien), interest, or claim, if any, in or to all equipment, trade fixtures, goods, inventory, accounts, or accounts receivable (as those terms are defined under the Uniform Commercial Code), which are now or hereafter located or stored on, or otherwise do now or hereafter pertain to, the Premises, and which are subject to a security interest or lease agreement granted or entered into by Tenant in favor of any creditor of Tenant (collectively, such items are referred to as the "Collateral"). Landlord shall not take custody or possession of the Collateral, or distraint or remove any of the Collateral from the Premises, or interfere with the shipment, removal or delivery of any Collateral to or from the Premises by Tenant (or any third party acting with Tenant's permission), without having first provided thirty (30) days written notice of such proposed action to any such creditor of Tenant to whom Landlord shall have previously delivered a waiver or similar writing.

## ARTICLE FOURTEEN

### Option to Renew Lease

Section 14.01. Option to Renew. Provided that this Lease has not been sooner terminated or expired as provided for herein and that no Event of Default shall have occurred and

be continuing on the date of the exercise of the option to renew, Tenant shall have two consecutive options to extend the term (the "Renewal Options") of this Lease beyond the initial term for five year periods each. Such option shall be exercised by Tenant giving its written notice to Landlord at least one hundred and eighty (180) days prior to the expiration of the then current term of this Lease (collectively, the "Renewal Terms" and in the case of the first five year renewal term, the "First Renewal Term" and in the case of the second five year renewal term, the "Second Renewal Term").

Section 14.02. Adjustment to Fixed Basic Rent. In the event Tenant elects to exercise such option to extend the term of this Lease, the Fixed Basic Rent during the Renewal Terms shall be as follows: (a) during the First Renewal Term, the Fixed Basic Rent shall be \$930,000.00 per annum, payable in equal monthly installments of \$77,500.00 each (the "First Renewal Fixed Basic Rent") and (b) during the Second Renewal Term, the Fixed Basic Rent shall be as follows:

<u>Year</u>	<u>Yearly Payments</u>	<u>Monthly Payments</u>
Lease Year 21	\$957,900.00	\$79,825.00
Lease Year 22	\$986,637.00	\$82,219.75
Lease Year 23	\$1,016,236.11	\$84,686.35
Lease Year 24	\$1,046,723.19	\$87,226.93
Lease Year 25	\$1,078,124.89	\$89,843.74

All other terms of the Lease shall remain the same.

## ARTICLE FIFTEEN

### Option to Purchase and Right of First Refusal

Section 15.01. Tenant's Option to Purchase. In consideration of Tenant's acceptance of this Lease, Tenant is hereby granted the exclusive right and option to purchase the Building, together with all of all those certain parcels and tracts of land on which the Building is situate, and all of Landlord's estate, right, title and interest thereto, including all easements and appurtenances thereto (collectively, the "Real Estate"), at any time prior to Lease Year 3, provided the Lease is then in full force and effect (the "Option"). The Option is to be exercised by Tenant's giving written notice of its intention to purchase the Real Estate to Landlord not less than sixty (60) days prior to Lease Year 3. This Lease and the aforesaid notice of Tenant's exercise of the Option shall constitute an agreement of sale between the parties, whereby Landlord agrees to sell and Tenant agrees to purchase the Real Estate upon the following terms and conditions:

(a) Settlement for the purchase of the Real Estate shall be on the earlier of (i) the date designated in Tenant's notice, which date shall be not less than thirty (30) days after the date such notice is delivered to Landlord, or (ii) the commencement date of Lease Year 3. Settlement shall occur in the office of Tenant's title insurance company, on such date as shall be designated in the aforesaid notice from Tenant to Landlord.

(b) In the event that Tenant effectively exercises the Option, the purchase price for the Real Estate shall be equal to the sum of \$6,500,000.00, plus \$21,000.00 multiplied by the number of full calendar months occurring after the first full calendar month of Lease Year 1 and before the calendar month during which settlement occurs, but including a pro rated portion of the \$21,000 for the calendar month during which settlement occurs; provided however, that in the

event that settlement is delayed through no fault of Tenant, the purchase price shall be calculated as if settlement had occurred on the date designated in Tenant's notice; and provided further that in no event shall the purchase price exceed the sum of \$7,000,000.00.

(c) The purchase price, computed as above provided, shall be payable by Tenant to Landlord, or to Landlord's mortgage lender if required by such lender, at the time of settlement, by title company check, cashier's check, certified check, or other immediately available funds.

(d) Tenant and Landlord shall each pay fifty percent (50%) of all realty transfer taxes, documentary stamp taxes or other taxes and charges imposed by the federal, state or local authorities upon the conveyance.

(e) Landlord shall convey to Tenant a good and marketable fee simple title to the Real Estate, free and clear of all liens, encumbrances, easements, restrictions or other exceptions or objections, except for the Permitted Exceptions, and except as have been created or consented to by Tenant during the term of this Lease. Tenant's title shall be insurable as such at ordinary rates by Commonwealth Land Title Insurance Company or such other title insurance company selected by Tenant. Except for Landlord's special warranty contained in the deed conveying the Real Estate to Tenant, which warranty shall be subject to the aforesaid permitted exceptions, Landlord shall make no representations or warranties regarding the Real Estate.

(f) Tenant acknowledges that Tenant's obligation to purchase the Real estate following the effective exercise of the Option shall not be subject to Tenant's ability to obtain purchase money financing or any other contingency, except for Landlord's obligation to deliver title to the Real estate as aforesaid. In the event Tenant fails to complete settlement for any reason whatsoever, this Lease shall remain in full force and effect in accordance with its terms, including the right to exercise the Renewal Options. In the event that Tenant is in default of its obligation to purchase the Real Estate, when and as required hereunder, and such default is not cured within ten (10) days of the date of such default, Tenant shall reimburse Landlord for Landlord's reasonable costs and expenses actually incurred by Landlord in anticipation of completing settlement, but in no event shall Tenant be obligated to reimburse Landlord for more than \$5,000.00.

Section 15.02: Tenant's Right of First Refusal. Landlord hereby grants to Tenant an exclusive right of first refusal to purchase the Real Estate on the terms set forth in this Section 15.02. In the event that at any time during the Term, and provided the Lease is then in full force and effect, Landlord shall receive a bona fide offer to purchase all or any part of the Real Estate, and desires to accept such offer, then Landlord shall promptly notify Tenant in writing of such offer, such notice to specify the price, payment and other material terms of such offer, and Landlord shall first offer to sell the Real Estate or such portion of the Real Estate which is the subject of such offer to Tenant on the same such terms. Tenant may accept such offer by written notice to Landlord within fifteen (15) business days following the receipt of Landlord's notice to Tenant. Upon Tenant's acceptance of such offer, closing shall occur in accordance with the terms of the offer provided to Tenant by Landlord. If Tenant does not agree to purchase the Real Estate or the subject portion thereof, Landlord shall have the right to proceed to sell the Real Estate, or the subject portion thereof, pursuant to the terms of such offer or on other terms no more favorable to the purchaser than were presented to Tenant, subject to this Lease, the Option, and the other rights of Tenant hereunder, and provided such sale is completed within the later of

(i) 120 days from the date Tenant gives notice that it does not elect to purchase the Real Estate,

or (ii) the period of time set forth in such offer. Notwithstanding anything set forth herein to the contrary, Landlord shall not be permitted to sell or convey the Real Estate during the first two years of the Term to anyone but Tenant, except for a conveyance to a partnership, trust, or other legal entity in which Brian O'Neill, an individual who presently owns an interest in Landlord, shall continue to own a legal or beneficial interest, and with respect to such conveyance Tenant's right of first refusal granted under this Section shall not be deemed to be extinguished and the deed or other writing evidencing such conveyance shall expressly provide that the conveyance and the grantee's rights with respect thereto are and shall be subject to this Lease.

Section 15.03. Memorandum of Lease and Option to Purchase. Concurrently with the execution hereof, the parties hereto shall execute and deliver a memorandum of this lease and option to purchase in the form attached hereto as Exhibit "D," which memorandum shall thereafter be promptly recorded in the Office of the Recorder of Deeds of Montgomery County, Pennsylvania. The memorandum shall indicate the terms by which the lease and option to purchase granted herein shall expire.

## ARTICLE SIXTEEN

### Miscellaneous

#### Section 16.01. Assignment; Sublease.

(a) Except as provided in paragraph (b) below, Tenant shall not assign or sublet the Premises or any part thereof without Landlord's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. If Tenant desires to assign this Lease or sublet any or all of the Premises, Tenant shall give Landlord written notice prior to the anticipated effective date of the assignment or sublease, and shall provide Landlord with a written sublease or assignment, signed by each of Tenant and Tenant's assignee or subtenant, and a copy of the most recently available financial statement for such assignee or subtenant. Landlord shall then have a period of ten (10) days following receipt of such notice to notify Tenant in writing that Landlord elects either (1) to terminate this Lease as to the space so affected as of the date so requested by Tenant, or (2) to permit Tenant to assign this Lease or sublet such space. If Landlord shall fail to notify Tenant in writing of such election within such period, Landlord shall be deemed to have approved such assignment or sublease.

(b) Notwithstanding anything to the contrary contained in paragraph (a) above, Tenant may assign or sublet all or any portion of the Premises if either (A) (1) Tenant is not in default of any its obligations under this Lease, (2) Tenant remains obligated hereunder, (3) the proposed use of the Premises is in compliance with all applicable Laws pertaining to the Premises, and does not violate any restrictive covenant to which the Landlord may be bound, and (4) the prospective assignee or subtenant has signed a written sublease or assignment with Tenant and therein agrees to be bound by all the terms and conditions of the Lease respecting the portion of the Premises that is the subject of the assignment or sublease, or (B) (1) such assignee or subtenant is a subsidiary or an affiliate of Tenant, or owns or controls Tenant, (2) acquires all or substantially all of the assets of Tenant, or (3) acquires all or a majority of the capital stock of Tenant, Landlord shall consent and approve the proposed assignment or sublease within ten (10) days of Tenant's notice and shall not be permitted to withhold or condition such approval and consent.



(c) Any rent or other consideration realized by Tenant under any such sublease or assignment in excess of Fixed Basic Rent payable hereunder, net of the reasonable cost of any improvements which Tenant has made for the purpose of assigning or subletting all or a part of the Premises and other expenses incurred by Tenant associated with such assignment or subletting, including, without limitation, brokerage commissions and legal fees, shall be divided and paid, ten percent (10%) to Tenant, and ninety percent (90%) to Landlord.

(d) No assignment or subletting by Tenant shall relieve Tenant of any obligations under this Lease. Any assignment of subletting which conflicts with the provisions hereof shall be void.

Section 16.02. Notice. All notices, requests and other communications under this Lease shall be in writing and shall either be sent by registered or certified mail, return receipt requested, postage prepaid, by an overnight courier guaranteeing next day delivery (e.g., Federal Express, Purolator, UPS), in each instance addressed, as follows:

To Landlord: 525 VIRGINIA DRIVE ASSOCIATES LIMITED PARTNERSHIP  
443 South Gulph Road  
King of Prussia, Pennsylvania 19406  
Attention:

With Copy to: Kevin W. Walsh, Esquire  
Adelman, Lavine, Gold & Levin  
1900 Two Penn Center Plaza  
Philadelphia, PA 19102

To Tenant: BIO-PHARM PHARMACEUTICS SERVICES, INC.  
425 Delaware Drive  
Fort Washington, Pennsylvania 19034-2703  
Attention: John Santoro - 215-646-1226

With Copy to: Linda Ann Galante, Esquire  
Stradley, Ronon, Stevens & Young, LLP  
30 Valley Stream Parkway  
Malvern, PA 19355

or at such other address of which Seller or Purchaser shall have given notice as herein provided. All such notices, requests and other communications shall be deemed to have been sufficiently given for all purposes hereon on the second (2nd) day after the date of mailing thereof, or one day after overnight delivery, and may be given on behalf of any party by its counsel.

Section 16.03 Signage. During the last nine (9) months of the term, Landlord may place and maintain a "For Rent" or "For Sale" sign in or on the Premises, subject to Upper Dublin Township regulations.

Section 16.04. Survival of Valid Terms. If any term or provision of this Lease or the application thereof to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 16.05. Covenants to Bind and Benefit Respective Parties. The terms, conditions, covenants, provisions and agreements herein contained shall be binding upon and inure to the benefit of Landlord and Tenant, their successors and assigns.

Section 16.06. Captions and Headings. The captions and headings throughout this Lease are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Lease.

Section 16.07. Governing Law. This Lease and the relative rights, privileges, duties and obligations of the parties hereunder shall be governed by the Laws of the Commonwealth of Pennsylvania.

Section 16.08 Confidentiality.

(a) Landlord acknowledges that in the course of managing the Building Landlord may gain access to information or materials that are confidential or proprietary to Tenant, including information or materials pertaining to Tenant's business operations or information or materials with respect to which Tenant may be under an obligation of confidentiality to third parties ("Confidential Information"). Additionally the names, terms, conditions, facts, or other information pertaining to this Lease shall be deemed Confidential Information. Landlord shall keep all Confidential Information in strict confidence under appropriate safeguards. Except as may be required by judicial process, neither Landlord nor any employee, officer, director, agent or attorney of Landlord shall (i) disclose or reveal any Confidential Information, except with respect to the terms and conditions of this Lease, which may be disclosed to a limited group of the Landlords' officers, agents, and attorneys, who are actively participating in the negotiation, approval and execution of the Lease ("Party Representatives"), each of whom shall be informed of the confidential nature of the Lease; or (b) use any confidential Information in any way that could be detrimental to Tenant. This Section 16.08 shall be binding upon and inure to the benefit of all parties hereto and to each of their respective Party Representatives.

Section 16.09 Lease Guaranty. Contemporaneously with the execution of this Lease by Tenant, Guarantor shall execute and deliver to Landlord a guaranty in the form attached hereto as Exhibit "E".

Section 16.10 Counterparts. This Lease may be executed by the parties in any number of counterparts, each of which so executed shall be deemed an original; and such counterparts shall together constitute but one and the same Lease.

Section 16.05. Covenants to Bind and Benefit Respective Parties. The terms, conditions, covenants, provisions and agreements herein contained shall be binding upon and inure to the benefit of Landlord and Tenant, their successors and assigns.

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IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the day and year first above written.

525 VIRGINIA DRIVE ASSOCIATES  
LIMITED PARTNERSHIP, a Pennsylvania  
limited partnership, by its sole general partner  
525 VIRGINIA DRIVE ASSOCIATES  
ACQUISITION CORPORATION, a  
Pennsylvania corporation

By: 

President

BIO-PHARM PHARMACEUTICS  
SERVICES, INC., a Delaware corporation

By: 

Vice President

Joseph S. Timpio

EXHIBIT "A"

LEGAL DESCRIPTION/LOCATION OF THE PREMISES

EXHIBIT "B-1"

PLANS AND SPECIFICATIONS FOR LANDLORD IMPROVEMENTS  
(Comprised of the HSC Work Letter, as amended, the roofing contractor's letter, the landscaping plan, and the parking plan, all to be attached hereto).

EXHIBIT "B-2"

PLANS AND SPECIFICATIONS FOR TENANT WORK  
(Comprised of any available plans and specifications that may have been approved by Tenant prior to the execution of the Lease, if any, to be attached hereto).

EXHIBIT "C"

PERMITTED EXCEPTIONS

EXHIBIT "D"

MEMORANDUM OF LEASE

EXHIBIT "E"

FORM OF LEASE GUARANTY

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PREMISES

## PARCEL 1.

ALL THAT CERTAIN lot or piece of ground with the buildings and improvements thereon erected, Situate in Upper Dublin Township, Montgomery County, Commonwealth of Pennsylvania, bounded and described according to an As-Built Survey, made by Frank A. Tebo, Professional Engineer, dated November 21, 1975, as follows, to wit:

BEGINNING at a point at the intersection of the center lines of Delaware Drive and Virginia Drive and following the center line of Virginia Drive, North 37 degrees 24 minutes 53 seconds East, a distance of 470.00 feet to a point and the place of beginning; thence continuing along the center line of a Virginia Drive north 37 degrees 24 minutes 53 seconds East, a distance of 372.85 feet to a point; thence along a curve to the right with a central angle of 90 degrees, radius of 150 feet and an arc of 235.62 feet to a point; thence south 52 degrees 35 minutes 07 seconds East a distance of 720.00 feet thence south 52 degrees 35 minutes 07 seconds East a distance of 720.00 feet to a point; thence along a curve to the left with a central angle of 21 degrees, a radius of 200 feet and an arc of 73.30 feet to a point; thence south 36 degrees 37 minutes 06 seconds West, a distance of 469.90 feet to a point; thence south 85 degrees 44 minutes 06 seconds West, a distance of 98.00 feet to a point; thence north 55 degrees 35 minutes 07 seconds West, a distance of 874.00 feet to a point and the place of beginning.

## SUBJECT TO;

1. Covenants, easements, restrictions and encumbrances of record; and
2. State of facts shown on survey made by Frank A. Tebo, dated November 21, 1975 and any state of facts an updated survey would disclose.

TOGETHER with all right, title and interest, if any, of the said Grantor in and to the following described premises:

## Parcel 2

BEGINNING at a spike on the centerline of Virginia Drive (60.00 feet wide) a corner of this and land now or formerly of Kie Zin Associates, said point being at the distance of 470.00 feet measured north 37 degrees 24 minutes 53 seconds East along the centerline of Virginia Drive from a point marking its intersection with the centerline of Delaware Drive; thence from said beginning point extending along the

EXHIBIT A

centerline of Virginia Drive the four following courses and distances; (1) north 37 degrees 24 minutes 53 seconds East 372.85 feet to a spike a point of curve; (2) along a line curving to the right with a radius of 150.00 feet the arc distance of 235.62 feet to a spike a point of tangency; (3) south 52 degrees 35 minutes 07 seconds East 720.00 feet to a spike a point of curve; (4) along a line curving to the left with a radius of 200.00 feet the arc distance of 73.30 feet to a spike; thence leaving Virginia Drive along the centerline of a 40 foot wide drainage easement by land of Upper Haverhill Township Industrial Development passing over a drill hole at the distance of 24.50 feet a drill hole in a head wall at the further distance of 8.98 feet, south 36 degrees 37 minutes 06 seconds West 478.83 feet to a point in Pine Run Creek easement 60.00 feet wide; thence through Pine Run Creek, aforesaid, by land now or formerly of Great Atlantic & Pacific Tea Company said Pine Run Creek easement extending 35.00 feet northerly from and parallel to and 25.00 feet southerly from and parallel to herein described line south 85 degrees 44 minutes 06 seconds West 99.36 feet to a point; thence leaving Pine Run Creek by land of Kie Zin Associates (along the centerline of a drainage ditch) crossing an iron pin at the distance of 10 feet and crossing a drill hole in a concrete head wall 30 feet from the terminus of herein described line, north 52 degrees 35 minutes 07 seconds West 874.00 feet to the first mentioned point and place of beginning.

THE aforementioned described Parcel 2 is purportedly described according to an "As Built Survey" plan made for Juda Diener Foundation, made by Yerkes Associates, Inc., consulting engineers and surveyors dated October 5, 1979.

BEING known as 525 VIRGINIA DRIVE

BEING Parcel 54-00-16390-00-8

BEING the same premises which LOOMIS J. GROSSMAN by deed dated 10/16/79 and recorded 10/19/79 in the County of Montgomery in Deed Book 4464 page 402 conveyed unto JUDA DIENER FOUNDATION, A NEW JERSEY CORPORATION, in fee.

EXHIBIT A

EXHIBIT "B-1"

PLANS AND SPECIFICATIONS FOR LANDLORD IMPROVEMENTS

(Comprised of the HSC Work Letter, as amended, the roofing contractor's letter, the artist's rendering, landscaping plan, and the parking plan, all to be attached hereto).





HEALTH SCIENCES CONSTRUCTION GROUP, LTD

1 Grand Valley Parkway, Suite 4  
Methers, Pennsylvania 17345

(610) 889-9911 (610) 889-0247

Bio-Pharm  
525 Virginia Drive  
Fort Washington, PA

November 18, 1996

SCOPE OF INTERIOR SELECTIVE DEMOLITION  
TO BE PROVIDED BY LANDLORD

I. Office Wing

Two Stories Bounded by Columns 7.1 to 16 and Columns A.5 to Q

A. General Construction

1. Remove all interior partitions and related construction with the exception of stairwells, elevator shaft, toilet rooms and mechanical/electrical rooms.
2. Remove hung ceilings throughout including hangers.
3. Remove all floor coverings to original concrete slab.
4. Remove all kitchen and serving equipment associated with existing lunch room.
5. Remove all built-in casework and millwork.
6. All interior faces of exterior walls to remain, including perimeter fin-tube radiation heating system.

B. Mechanical

1. Remove existing roof-top and interior air handling units including controls. Provide roof infill of roof penetrations with framing, metal deck and roofing.
2. Remove existing roof-top mounted exhaust fans. Patch roof deck and roofing.
3. Remove all plumbing and service piping associated with existing lunch room and work areas. Cap all work below floor or behind walls and patch same.
4. Remove all air devices associated with removal of hung ceilings back to reheat coils, including all hangers. Duct mains and branch ducts to reheat coils to remain.

EXHIBIT B-1

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Landlord Demolition  
November 18, 1996  
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5. Hot water boiler, including all perimeter heat and reheat piping, to remain.
6. Domestic hot water heater, storage tank and loop piping to remain; cut and cap all abandoned drops.
7. Domestic cold water piping to remain; cut and cap all abandoned drops.
8. Existing sprinkler system to remain, including all drops and heads.
9. Remove Ansul fire protection system in kitchen.
10. Existing gas piping distribution to remain; cap at equipment being removed.

C. Electrical

1. Remove all interior lighting with the exception of rooms to remain. This includes removal of wiring back to lighting distribution panels. Provide or maintain minimum lighting for safety and exiting from building.
2. Exit lighting to remain at stairwells and exterior doors.
3. Remove all general purpose wiring and devices back to distribution panels.
4. Remove all power and control wiring back to source from all removed equipment. Include removal of HVAC panelboards A to H and the two (2) panelboards serving the kitchen/lunchroom in the 1st Floor Electrical Room.
5. All telephone and data wiring to be removed in its entirety, except the incoming feeders to the building.
6. Maintain central panel in lobby for ADT fire alarm system. Wiring to remote devices can be removed as part of demolition. Devices shall be turned over to the Tenant.
7. Remove master clock system in its entirety.

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II. Warehouse/Manufacturing Wing  
One - Story Bounded by Columns L.O to 7.0 and Columns A to S

A. General Construction

1. Remove all interior partitions.
2. Remove hung ceilings throughout, including hangers.
3. Remove all floor covering to original concrete slab.
4. Remove all hung miscellaneous iron, abandoned as a result of the removal of previous fitouts.
5. Remove previous Owner's abandoned equipment and appurtenances.

B. Mechanical

1. Remove all original roof-top AC units including controls and provide roof infill of roof penetrations with framing, metal deck and roofing.
2. Unit heaters in the loading dock area are to remain in operating condition.
3. Remove existing exhaust fans and gravity vents; patch roof deck and roofing.
4. Remove all ductwork distribution, including air devices and hangers.
5. Remove all plumbing and service piping associated with previous fitouts. Cap all work below floor or behind walls and patch same.
6. All systems related to Test Cells #1 and #2 to remain.
7. Gas distribution piping to remain. Cap same at equipment being removed.
8. The HVAC units that are to remain are located above the two (2) test cells and hung below the roof between Columns #2 and #3.

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Page Four

C. Electrical

1. Remove all interior lighting. This includes removal of wiring back to distribution panels. Provide or maintain minimum lighting for safety and for exiting from the building.
2. Exit lighting to remain at exterior doors.
3. Remove all equipment power and control wiring from equipment back to source.
4. Remove all bus duct distribution back to source, including all hangers and branch wiring.
5. Remove all general purpose wiring, including all devices, back to distribution panels.
6. Remove all telephone and data wiring in its entirety.

III. GENERAL ITEMS

- A. Tenant to identify any specific items to remain prior to start of demolition work by Landlord.
- B. Landlord to remove all of previous occupant's equipment not identified by tenant to remain.
- C. All PCB transformers/ballasts to be removed as part of the electrical demolition being performed by the Landlord. All non-PCB transformers are to remain.
- D. All hazardous materials to be removed as part of the demolition performed by the Landlord.
- E. Test Cells #1 and #2 along Column 1 are to remain, including all services and air conditioning.

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Landlord Demolition  
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Page Six

- F. Existing emergency generator and its distribution should remain to provide power for the minimal light levels required, exit lighting and ADT system.
- G. The entire wet sprinkler system is to remain in operating condition, including all alarm systems.
- H. Remove abandoned metal shed in the parking lot.

~~scribble~~

## LANDLORD IMPROVEMENTS

November 18, 1996

### 1. Exterior Lighting

- Parking lot lighting to be provided to meet Township Ordinance
- Replace exterior lighting fixtures on building, including egress fixtures at exit doors

### 2. Landscaping

- Landscaping around the entire building
- Drainage from roof drains to swale
- Pipe roof drain outlets on the east side of building to swale
- Improve drainage swale along Virginia Drive

### 3. Building Entrance

- Glass and entrance by Tenant

### 4. Roofing



PARKING LOT SPECIFICATIONS  
EXHIBIT "B"

Revised October 23, 1996

1. Remove crumbled existing paving where required prior to resurfacing
2. Remove existing vegetation
3. Clean off silt and sweep, pushing off earth and debris
4. Run leveling course as required to fill depressions and smooth out existing irregularities
5. Remove precast concrete wheel stops
6. Tack coat existing surface for proper adhesion
7. Resurface existing parking lot and driveway with 2 inch DD-2 Asphalt Wearing Course
8. Cut transition keys at street entrances and seal joints
9. Remove existing surface at concrete walks for flush joints
10. Re-stripe parking stalls and handicap aisles as required by codes
11. Reinstall wheel stops (including new pins)

## STUCCO REPAIR SPECIFICATIONS EXHIBIT "C"

Revised October 23, 1996

- Remove the loose stucco down to firm substrate
- Re-coat the areas that were removed with the same finish to match existing stucco
- Paint all the stucco with painting system recommended by paint manufacturer

## WALKWAY SPECIFICATIONS EXHIBIT "D"

Revised October 28, 1996

- Remove all existing concrete in the main entrance courtyard
- Replace with 4 inches of new 3500 PSI concrete to match existing layout
- Walkway along the Virginia Drive entrance will be completely removed
- Replace concrete with 4 inches of concrete to match existing layout
- Areas to be replaced are cross-hatched on attached plan
- Replace/repair any sidewalks as required by the Township inspector
- Walkways shall be laid out and constructed to meet the current L & I and ADA requirements
- Replace any damaged sections of the walkway along road

PAINTING SPECIFICATIONS  
EXHIBIT "E"

Revised October 29, 1996

To provide labor, material and supervision to furnish and install paint system which includes the following items:

- Existing masonry
- Metal siding
- Exterior metal doors
- Warehouse siding
- Paint systems shall be selected and applied in accordance with paint manufacturers' recommendations and specifications. Systems shall be submitted to Tenant for approval.
- Preparation work shall be in accordance with paint manufacturers' guidelines.
- Patch penetrations in metal siding prior to painting.
- Accent stripe to be painted in accordance with rendering.

DEC 03 1996 07:05PM FROM

**DDP**

Contracting Co., Inc.

TEL: (610) 430-1992

FAX: (610) 439-8887

O'Neil Properties  
C/O Drew Wolfington

Dec. 3, 1996

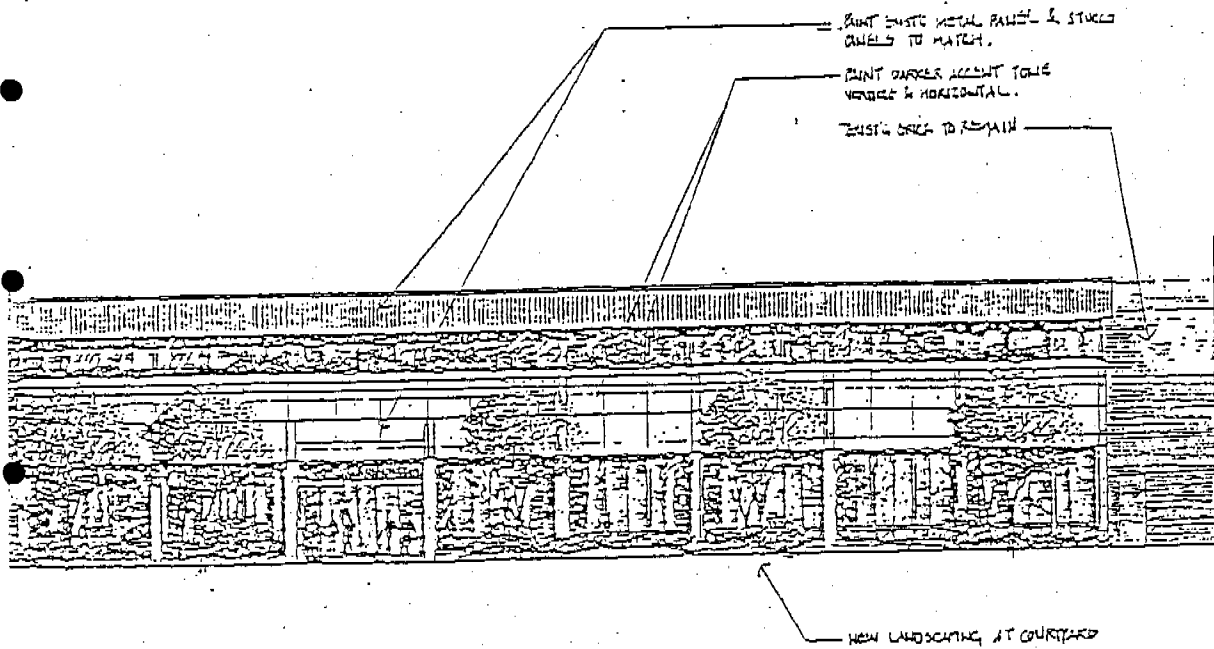
Phone: 610 878-7441  
Fax: 610 878-7487RE: 525 Virginia Ave.  
Fort Washington, PA

We propose to furnish the necessary labor, materials, equipment, and supervision to perform the following scope of work:

Entire roof area.

1. We shall vacuum all existing slag gravel from the existing roof area.
2. We shall remove the existing built up roof down to the corrugated steel decking.
3. We shall loose lay a new 1" polyisocyanurate insulation board over to the steel deck over the entire roof area.
- \* We shall replace any deteriorated steel decking at a cost of \$ 6.75 per square foot.
4. We shall install a new Firestone 045 LSFR EPDM roof system loose laid over the insulation board to the entire roof area.
5. We shall install tapered insulation crickets where necessary to improve drainage.
6. We shall flash all pipe protrusions, hvac units, and any other misc. protrusions through the roof. If a return trip is required to flash in any additional HVAC units they will be billed at a cost of \$ 875.00/ unit.
7. We shall fabricate and install new heavy gauge white aluminum scuppers to properly drain the new roof system.
8. We shall reuse the existing copper counter flashing.
9. We shall install new aluminum coping edge flashing to the perimeter edge of the entire building.
10. We shall flash all drains, seams, and parapet walls.
11. We shall install the recommended ballast (river rocks) over the EPDM to secure the entire roof system.
12. We shall remove any job related debris upon completion of the job.

Upon completion of the project, you shall receive a fifteen (15) year labor and materials warranty from Firestone corporation.



525 VIRGINIA DRIVE  
FACADE STUDY @ COURTYARD ENTRANCE

THOMAS E. HILL  
ARCHITECT

Architecture  
Planning  
Interior

Thomas E. Hill, Architect  
311 Williams Lane  
Haverhill, MA 01830  
tel: 978/371-1213

Revisions

Jan 14, 2003 Drawn  
Date  
Scale  
Drawing Title

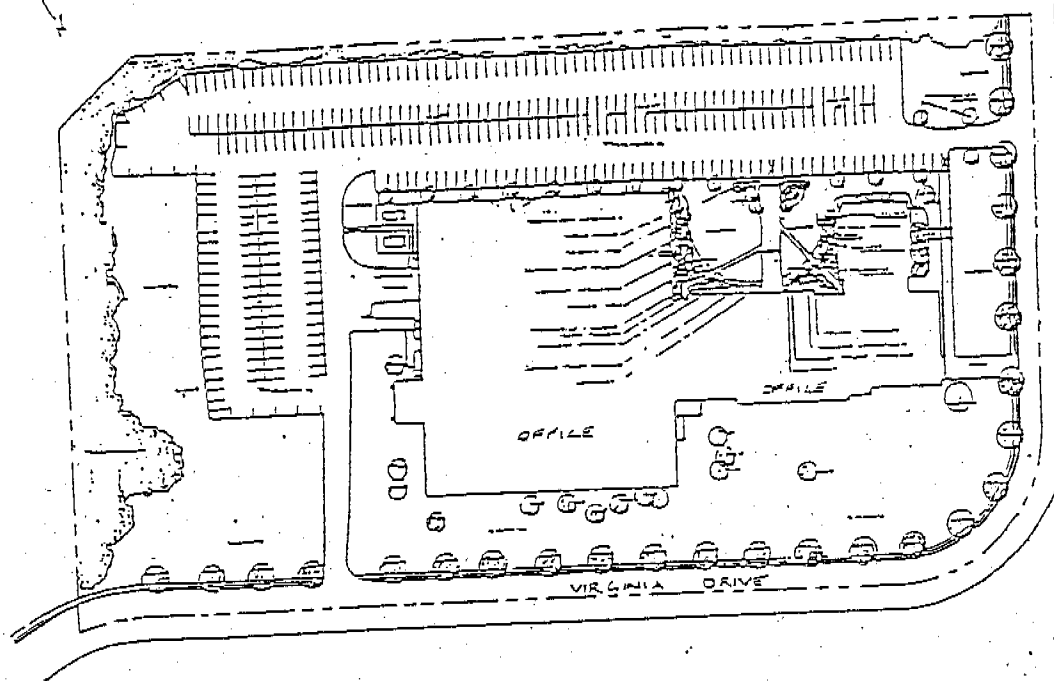


# PLANT LIST

PLANT LIST

PLANT LIST

PLANT LIST



NOTES:

525 VIRGINIA DRIVE  
 FORT WASHINGTON INDUSTRIAL PARK UPPER DUBLIN TOWNSHIP, PENNSYLVANIA

SCALE 1"=40'  
 SURFACE 1976  
 L 42433

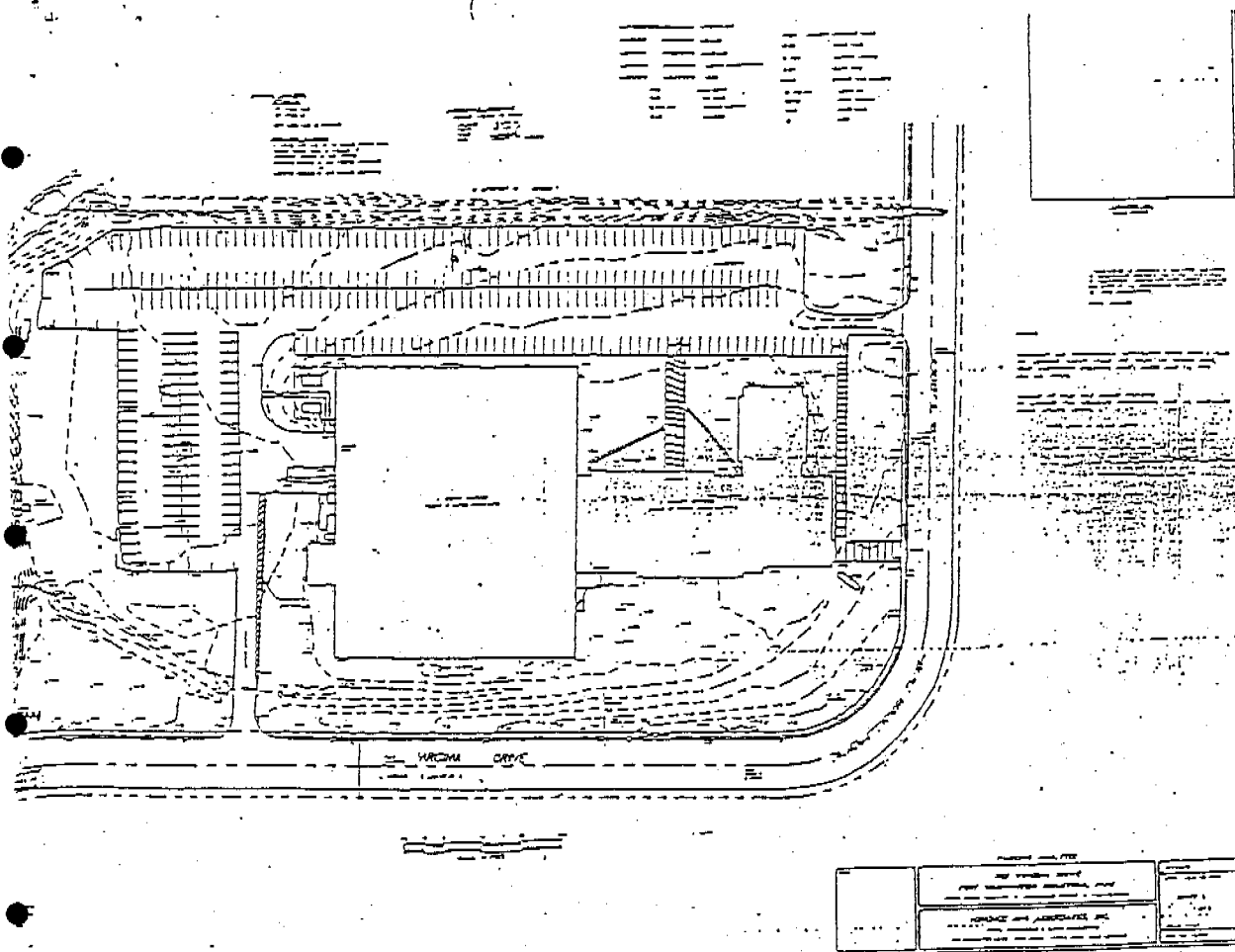


EXHIBIT "B-2"

PLANS AND SPECIFICATIONS FOR TENANT WORK

(Comprised of any available plans and specifications that may have been approved by Tenant prior to the execution of the Lease, if any, to be attached hereto).

EXHIBIT "C"

PERMITTED EXCEPTIONS

EXHIBIT "C"

PERMITTED TITLE EXCEPTIONS

1. Possible additional assessments for taxes for new construction or for any major improvements pursuant to provisions of facts of acts of assembly relating thereto, which are not yet due and payable.
2. Title to that portion of the premises within the bed of Virginia Drive is subject to the public and private rights therein.
3. Rights granted to the Philadelphia Suburban Gas & Electric Company as in deed book 900 page 536.
4. Rights granted to Philadelphia Electric Company as in deed book 3183 page 544 and deed book 3385 page 92.
5. Rights granted to Philadelphia Electric Company and the Bell Telephone Company of Pennsylvania as in deed book 3213 page 382.
6. Sanitary sewer easement agreement as in deed book 4749 page 799.
7. Easement of 40 feet wide drainage easement through premises.
8. Stream of water (Pine Run Creek) flows through premises, subject to the riparian rights of owners of ground abutting same.

EXHIBIT "D"

MEMORANDUM OF LEASE



MEMORANDUM OF LEASE AND OPTION AGREEMENT

THIS MEMORANDUM OF LEASE AND OPTION AGREEMENT, made as of \_\_\_\_\_ 1996, between 525 VIRGINIA DRIVE ASSOCIATES LIMITED PARTNERSHIP, a Pennsylvania limited partnership, whose address is 443 South Gulph Road, King of Prussia, Pennsylvania 19406 ("Owner"), and BIO-PHARM PHARMACEUTICS SERVICES, INC., a Delaware corporation, whose address is Four Valley Square, 512 Township Line Road, Blue Bell, Pennsylvania 19422 ("Purchaser").

NOW, THEREFORE, the parties hereto, in consideration of the premises and mutual covenants, promises and undertakings herein set forth, and intending to be legally bound hereby, agree as follows:

1. Owner is the legal and record owner of certain real estate, including an office building and other improvements, known as 525 Virginia Drive, Fort Washington, Upper Dublin Township, Montgomery County, Pennsylvania, as more fully described on Exhibit "A" attached hereto, together with all appurtenances thereto (the "Property").
2. Owner, as "Landlord" and Purchaser as "Tenant" have entered into a certain Lease Agreement, dated the date hereof ("Agreement"), respecting the Property for an initial term of fifteen (15) years, with two (2) consecutive options to extend the term for five (5) year periods each.
3. Pursuant to the Agreement, Purchaser was also granted an exclusive option to purchase the Property.
4. This Memorandum is intended for recording purposes only, and does not supersede, diminish, add to or change the terms of the Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the day and year first above written.

525 VIRGINIA DRIVE ASSOCIATES  
LIMITED PARTNERSHIP

BIO-PHARM PHARMACEUTICS  
SERVICES, INC.

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
President

EXHIBIT D

COMMONWEALTH OF PENNSYLVANIA

: SS.

COUNTY OF

On this \_\_\_\_\_ day of \_\_\_\_\_, 1996, before me, the undersigned officer, a notary public in and for the state and county aforesaid, personally appeared \_\_\_\_\_, who acknowledged that he is a duly appointed and acting President of 525 VIRGINIA DRIVE ASSOCIATES LIMITED PARTNERSHIP, a Pennsylvania limited partnership, and that he, in such capacity, executed the foregoing instrument on behalf of the corporation, for the purposes therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA

: SS.

COUNTY OF

On this \_\_\_\_\_ day of \_\_\_\_\_, 1996, before me, the undersigned officer, a notary public in and for the state and county aforesaid, personally appeared \_\_\_\_\_, who acknowledged that he is a duly appointed and acting President of BIO-PHARM PHARMACEUTICS SERVICES, INC., a Delaware corporation, and that he, in such capacity, executed the foregoing instrument on behalf of the corporation, for the purposes therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:

EXHIBIT "A"

EXHIBIT "E"

FORM OF LEASE GUARANTY

LEASE GUARANTY

In consideration of and as an inducement for the granting, execution and delivery of the foregoing Lease Agreement, dated December 3, 1996 (hereinafter called the "Lease"), by and between 525 VIRGINIA DRIVE ASSOCIATES LIMITED PARTNERSHIP, a Pennsylvania limited partnership, the landlord therein named (hereinafter called the "Landlord") and BIO-PHARM PHARMACEUTICS SERVICES, INC., a Delaware corporation, its tenant therein named (hereinafter called "Tenant"), and in further consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration paid by Landlord to the undersigned, LB.A.H., INC. a Delaware corporation (hereinafter called the "Guarantor"), hereby guarantees to Landlord, its successors and assigns, the full and prompt payment of all Fixed Basic Rent and Additional Rent (as those terms are defined in the Lease) payable by Tenant under the Lease and the full, faithful and prompt performance and observance of all the covenants, terms, conditions and agreements therein provided to be performed and observed by Tenant; and Guarantor does hereby become guarantor to Landlord, its successors and assigns, for and with respect to all of the aforesaid obligations of Tenant under the Lease. Guarantor hereby covenants and agrees to and with Landlord, its successors and assigns, that if default shall at any time be made by Tenant which is not cured within the applicable cure periods under the Lease, in the payment of any Fixed Basic Rent or Additional Rent payable by Tenant under the Lease, and such sums are not paid by Tenant or otherwise recovered by Landlord within the time provided under the Lease, Guarantor shall forthwith pay such rent or other sums or charges to Landlord, its successors and assigns. Landlord shall provide Guarantor with a copy of any and all notices of default which are given to Tenant as required under the terms of the Lease.

1. This Guaranty is an agreement of suretyship as well as an absolute guaranty of payment. Guarantor's liability hereunder is unconditional and Landlord shall not be obligated to proceed against Tenant before commencing an action against Guarantor to recover such payment.

2. This Guaranty shall be a continuing Guaranty and (whether or not Guarantor shall have notice or knowledge of any of the following) the liability and obligation of Guarantor hereunder shall be absolute and shall remain in full force and effect and shall not be released, discharged or in any way impaired by: (a) any amendment or modification of, or supplement to, or extension or renewal of, or termination of, the Lease or any assignment or transfer thereof; (b) any exercise or non-exercise of any right, power, remedy or privilege under or in respect of the Lease or this Guaranty or any waiver, consent or approval by Landlord with respect to any of the covenants, terms, conditions or agreements contained in the Lease or any indulgence, forbearances or extensions of time; (c) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceedings relating to Tenant, its successors and assigns, or its properties or creditors; (d) any limitation on the liability or obligation of Tenant under the Lease or its estate in bankruptcy or of any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the United States Bankruptcy Code, as amended, or any other statute or from the decision of any court; (e) any transfer or assignment of its interests under the Lease or any subleasing of the Premises (as defined in the Lease); or (f) any release of any other guarantor of the Lease.

3. Until all of Tenant's obligations under the Lease are fully performed, Guarantor:

(a) waives any right of subrogation against Tenant by reason of any payments or acts of performance by Guarantor, in compliance with the obligations of Guarantor under this Guaranty;

(b) waives any other right that Guarantor may have against Tenant by reason of any one or more payments or acts in compliance with the obligations of Guarantor under this Guaranty; and

(c) subordinates any liability or indebtedness of Tenant held by Guarantor to the obligations of Tenant to Landlord under the Lease.

4. Guarantor's liability hereunder shall cease upon the payment by Tenant of all Fixed Basic Rent and Additional Rent due under the terms of the Lease, provided that Tenant is not then in default under the terms of the Lease.

5. This Guaranty shall be legally binding upon Guarantor, its successors and assigns, and shall inure to the benefit of Landlord, and its successors and assigns.

6. The word "Landlord" shall mean all parties to Landlord, regardless of number and the word "he" shall be synonymous with "she", "it" and "they"; and the word "his" shall be synonymous with "her", "its" and "their". Where appropriate, the singular shall include the plural.

IN WITNESS WHEREOF, Guarantor, intending to be legally bound hereby, has executed this Guaranty this 3rd day of December, 1996.

L.B.A.H., INC.

By: \_\_\_\_\_  
Vice President

EXHIBIT "E"



Exhibit B



1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF PENNSYLVANIA  
4

5 -----  
6 BARRY M. PORTNOY and GERARD M.  
7 MARTIN, trustees for HUB  
8 Properties Trust,  
9

10 Plaintiffs,  
11

12 vs.  
13

14 OMNICARE PHARMACEUTICS, INC., and  
15 OMNICARE CLINICAL RESEARCH, INC.,  
16

17 Defendants.  
18 -----  
19

20 CASE NO.  
21 02-CV-2905  
22

23 Deposition of: JANICE M. RICE  
24 Taken: By the Plaintiffs  
Pursuant to Agreement

25 Date: March 11, 2003

26 Time: Commencing at 10:13 a.m.

27 Place: Thompson Hine, LLP  
28 312 Walnut Street  
29 Suite 1400

30 Cincinnati, Ohio 45202-4029  
31 Before: Wendy L. Raymer, RPR  
32 Notary Public - State of Ohio  
33  
34

COPY

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1 A. I don't know.  
 2 Q. You don't?  
 3 A. I don't.  
 4 Q. Have you ever had any problems with Marsh and  
 5 the services that they provided for your company?  
 6 A. Other than with respect to this flood, no.  
 7 Q. What flood are you referring to?  
 8 A. The flood in 2001.  
 9 Q. Other than that, you have not had any problems  
 10 with them?  
 11 A. Not any significant issues, no.  
 12 Q. Would you characterize the problem you had as a  
 13 result of the 2001 flood as a significant issue?  
 14 A. I would.  
 15 Q. What was the problem you had with Marsh as a  
 16 result of the 2001 flood?  
 17 A. Marsh had the responsibility of identifying to  
 18 Omnicare exposures, particularly exposures that were not  
 19 insured, and this exposure was not identified to us.  
 20 Q. You were underinsured as a result of -- for the  
 21 damage that you suffered as a result of the 2001 flood,  
 22 right?  
 23 A. We were.  
 24 Q. Do you know how much insurance was in place for

Page 76

1 Q. What did it do?  
 2 A. Marsh simply added those facilities to  
 3 Omnicare's policies of coverage, without identifying to  
 4 Omnicare that the exposure exceeded the amount of insurance  
 5 Omnicare had in place at the time.  
 6 Q. How much flood coverage did you have in 2001 on  
 7 those facilities?  
 8 A. In 2001, we had FEMA policies placed for each  
 9 of those two facilities. And in addition to the FEMA  
 10 policy, a \$2 1/2 million supplement on the primary policy.  
 11 Q. The \$2 1/2 million was, in effect, an umbrella  
 12 over the FEMA policies?  
 13 A. All FEMA policies, correct.  
 14 Q. So you had a million dollars each in FEMA  
 15 coverage for both properties?  
 16 A. In Fort Washington, correct.  
 17 Q. So there was a total of \$4 1/2 million in  
 18 coverage that Marsh acquired for you?  
 19 A. True.  
 20 Q. Prior to purchasing the insurance for those  
 21 facilities through Marsh, is it your testimony that there  
 22 was less insurance coverage than there was in 2001?  
 23 A. Prior to placing the coverage with Marsh,  
 24 that's my understanding, although I wasn't involved

Page 75

1 the Fort Washington facilities prior to switching the  
 2 insurance coverage to Marsh?  
 3 A. I have become aware of the insurance that was  
 4 in place.  
 5 Q. How much was in place prior to running the  
 6 business through Marsh?  
 7 A. For the risk of --  
 8 Q. Flood.  
 9 A. -- flood. During what period of time?  
 10 Q. How about 2000?  
 11 A. It's my understanding that there was a half a  
 12 million dollars in flood coverage for one facility and no  
 13 flood insurance for the other, possibly.  
 14 Q. That was prior to writing the business through  
 15 Marsh?  
 16 A. Correct.  
 17 Q. So are you testifying then that -- well, strike  
 18 that. How much coverage did Marsh suggest that you buy for  
 19 those properties?  
 20 MS. FILIATRAUT: I'm going to object to the  
 21 form.  
 22 A. Marsh didn't make a suggestion as to the amount  
 23 of coverage Omnicare should purchase for those facilities.  
 24 BY MR. HABER:

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1 directly in those placements.  
 2 Q. Well, how did you come to that understanding?  
 3 A. In preparation for this deposition.  
 4 Q. Did your attorneys tell you?  
 5 MS. FILIATRAUT: Objection. You're not to  
 6 disclose any conversations with counsel.  
 7 BY MR. HABER:  
 8 Q. Did you learn from a source other than your  
 9 attorneys?  
 10 A. I don't recall.  
 11 Q. When did you learn of the prior coverage  
 12 amounts?  
 13 A. I don't remember.  
 14 Q. Well, how long have you been preparing for this  
 15 deposition?  
 16 A. Maybe three weeks.  
 17 Q. So is it fair to say that you learned of the  
 18 coverage amounts in place prior to Marsh within the past  
 19 three weeks?  
 20 A. I don't recall whether I was aware of the  
 21 coverage amounts at the time we were looking at other  
 22 flood-related issues or not. I honestly don't remember.  
 23 Q. I misunderstood an earlier answer then. I  
 24 thought you had told me that you learned of the coverage

20 (Pages 74 to 77)

Page 90

1 A. I don't know what his position with Marsh is  
2 right now. At the time of that conversation, he was the  
3 account executive assigned to Omnicare's account, and I  
4 believe he had the title of managing director.  
5 Q. Do you believe he's no longer in that position?  
6 A. I don't know that he -- he's no longer my  
7 account executive.  
8 Q. You know that for a fact?  
9 A. I know that for a fact. I don't know what  
10 position he holds at Marsh right now.  
11 Q. Where is he located?  
12 A. I don't know whether his office is currently  
13 housed out of the Morristown, New Jersey office or the New  
14 York, New York office.  
15 Q. What did Rick Thoenes tell you regarding how  
16 it came about that you were underinsured?  
17 A. I don't recall the specific conversation, and I  
18 have a feeling that there were pieces of information that  
19 evolved over a period of maybe days or weeks following.  
20 Q. Well, why don't you tell me generally then what  
21 you were told and what you learned from those conversations  
22 with Rick.  
23 A. The day immediately following the flood, I  
24 reported the flood to Rick in an effort to have a Marsh

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1 representative present at the scene to help with the claim  
2 stuff at the time of the loss. I believe that I received a  
3 return phone call from Rick, and I don't know whether or  
4 not Mark Cantalamessa was on the same call.  
5 Q. You believe Mark Cantalamessa was on the call?  
6 A. He may have been on the call, I don't remember.  
7 Q. Okay.  
8 A. I remember Rick was on the call, and I remember  
9 them saying to me that they would send someone. That Mark  
10 would be able to be there the next day or the day after to  
11 work with the adjusters on the claim. And I asked the  
12 question, just confirm for me that the FEMA policy was in  
13 place at least 30 days prior to the flood. They said,  
14 we've already pulled it, and we understand that the FEMA  
15 policy was in place in May, but the coverage is limited  
16 after the FEMA policy to 2 1/2 million in coverage.  
17 Q. They provided that information unsolicited to  
18 you in response to your question about the FEMA policy?  
19 A. Correct.  
20 Q. How did you react?  
21 A. I said -- I was shocked.  
22 Q. What happened next?  
23 A. I said, well, it's -- we have a sublimit on  
24 Flood Zone A. And I said, why --

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1 Q. That's the question I --  
2 A. -- do we have a Flood Zone A sublimit?  
3 Q. That's the question I would like to have an  
4 answer to as well. What was the answer?  
5 A. No answer. There is no -- there is no answer.  
6 Q. They didn't provide an explanation as to why  
7 you only have a \$2 1/2 million sublimit for Flood Zone A?  
8 A. No. They were able to point out to me when the  
9 sublimit on the Zone A flood came into existence on the  
10 policy, but have not provided any explanation as to why  
11 additional limits weren't offered to Omnicare, recommended  
12 to Omnicare.  
13 Q. When did the \$2 1/2 million limit come into  
14 place?  
15 A. The \$2 1/2 million sublimit was definitely on  
16 the policy effective with the 12/21, 1999, 2000 policy  
17 period.  
18 Q. Was that when your insurance policies renewed  
19 every year, 12/21?  
20 A. That's when the property insurance policies  
21 renewed each year, yes.  
22 Q. And would that also include the flood policies?  
23 A. Well, there weren't flood policies prior to  
24 that renewal period.

Page 93

1 Q. Okay.  
2 A. Okay. So --  
3 Q. So 12/21/99, is that when you bought your first  
4 FEMA policy?  
5 A. No. That was the first time we found out that  
6 FEMA policies were required because the coverage under the  
7 policy -- coverage under the primary property policy did  
8 not cover the first million dollars. That's the issue we  
9 discussed a little earlier.  
10 Q. Right. When did you buy your first FEMA policy  
11 if it wasn't 12/21/99?  
12 A. It was during the spring of 2001.  
13 Q. You learned that they were required on  
14 12/21/99, but you didn't buy one until 2001?  
15 A. Let me back up. It wasn't that we learned that  
16 they were required. We understood that the primary policy  
17 had a million dollar deductible which could only be filled  
18 by a FEMA policy, okay.  
19 Q. You learned that in '99?  
20 A. We learned that immediately prior to the  
21 renewal in 1999.  
22 Q. Okay.  
23 A. At that point in time, Marsh was unable to  
24 identify for Omnicare what policy -- what properties it

24 (Pages 90 to 93)

Page 94

1 owned that were in Flood Zone A. The issue of identifying  
2 Flood Zone A had never been a topic of any conversation  
3 earlier than that.

4 Q. All right. So how long did it take them to  
5 identify the properties in Flood Zone A?

6 A. They continued to identify Flood Zone A  
7 properties throughout the year 2000.

8 Q. When did they identify 425 Delaware and 525  
9 Virginia Avenue in Fort Washington, Pennsylvania as  
10 properties located in Flood Zone A?

11 A. During 2000, but I don't know specifically  
12 when.

13 Q. So after Marsh would identify these properties  
14 for you in a continuing process, would you then purchase  
15 flood policies as they were identified?

16 A. We were unable to purchase a flood policy  
17 immediately after identifying that a property was in Flood  
18 Zone A. The process was that once a property was  
19 identified as being in Flood Zone A and subject to the  
20 million dollar deductible, that we would connect Marsh with  
21 the controller of that particular site in order for them to  
22 work together and to complete the FEMA applications. The  
23 applications were then submitted. We would receive quotes  
24 back, and that was the process. It was in the early part

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1 Q. Have you -- what was management's reaction to  
2 your report regarding your investigation into how it came  
3 about that you were underinsured for these properties?

4 MS. FILIATRAUT: Objection to the form.

5 A. When you say management's reaction to my  
6 report, what are you referring to?

7 BY MR. HABER:

8 Q. Well, perhaps I'm assuming something that I  
9 shouldn't. Did you report to anybody the results of your  
10 findings regarding how the issue came about?

11 A. On Sunday, when I found out that the coverage  
12 was limited to 2 1/2 million, I immediately reported that  
13 information to Dave Froesel, but there wasn't anything more  
14 formal than that that was presented to Mr. Froesel.

15 Q. I'm not looking for something formal. I just  
16 want to know -- let me explain.

17 A. Okay.

18 Q. Hypothetically, I own a company. I don't have  
19 enough insurance on it. And I'm scratching my head  
20 thinking, why is that? And so one of my employees goes and  
21 finds out and hopefully tells me about it so that I could  
22 avoid the problem in the future. Did something like that  
23 happen here?

24 MS. FILIATRAUT: I'm going to object to the

Page 95

1 of 2001 that we purchased FEMA policies for generally all  
2 of our Flood Zone A properties.

3 Q. So Marsh identified the Fort Washington  
4 properties as Flood Zone A properties sometime in 2000, and  
5 then a process was undertaken to acquire the FEMA policies  
6 to cover the million dollar deductible on your main policy?

7 A. Correct.

8 Q. And that process took a few months, six months,  
9 something like that?

10 A. Correct. And Marsh would not have identified  
11 these properties in Fort Washington as Flood Zone A until  
12 sometime after April or May of 2000, at the earliest.

13 Q. So Marsh never provided you with an explanation  
14 regarding the underinsurance as to how it came about?

15 A. You say an explanation "as to how it came  
16 about." They were able to identify when the supplement  
17 first became part of the policy. They have not offered any  
18 explanation, that I'm aware of, as to why additional limits  
19 weren't offered.

20 Q. Is it your testimony that Marsh didn't offer  
21 additional coverage, other than the \$2 1/2 million?

22 A. Marsh never presented Omnicare with a quote for  
23 coverage for Flood Zone A properties excess of 2 1/2  
24 million.

Page 97

1 form of the question.

2 A. I think that they were equally as surprised as  
3 I was to find out that the coverage was limited to 2 1/2  
4 million.

5 BY MR. HABER:

6 Q. Right.

7 A. I'm unaware of any formal investigation  
8 undertaken by the company to determine why Marsh didn't  
9 offer us additional limits particularly.

10 Q. Well, you characterized something as a formal  
11 investigation. What is it -- how would you characterize  
12 what you did when you called Marsh to find out what it is  
13 they did and why they didn't offer you more coverage?

14 A. It was that. That's what I did, and that's  
15 what I repeated to management.

16 Q. So you passed that information on to Mr.  
17 Froesel?

18 A. Correct.

19 Q. Did you pass it on to anyone else?

20 A. Not that I recall.

21 Q. What was Mr. Froesel's reaction to your report?

22 A. As I suggested, he was equally as surprised as  
23 I was.

24 Q. So he was surprised that you were underinsured,

25 (Pages 94 to 97)

Page 106

1 there is anything I need to be aware of or doing with  
 2 respect to the Marsh issue.  
 3 Q. What has he told you in response to those  
 4 questions?  
 5 A. No, I haven't been asked to do anything  
 6 particularly.  
 7 Q. So basically he has told you that he doesn't  
 8 need any assistance from you dealing with Marsh?  
 9 A. Yes.  
 10 Q. However, you continue to deal with Marsh on a  
 11 day-to-day basis to do the routine work that is part of  
 12 your job description, right?  
 13 A. Correct.  
 14 Q. Have you been told that the relationship with  
 15 the company -- between the company and Marsh has changed in  
 16 some way as a result of the underinsurance incident?  
 17 A. No.  
 18 Q. Have you seen certain conduct or activity that  
 19 would lead you to believe that the relationship has been  
 20 changed?  
 21 A. Conduct or activity by whom?  
 22 Q. Anyone.  
 23 A. No. Our working relationship ongoing with  
 24 Marsh has been uninterrupted.

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1 MR. HABER: Please mark this as Exhibit Rice 2.  
 2 (Plaintiffs' Exhibit 2 was marked for  
 3 identification.)  
 4 BY MR. HABER:  
 5 Q. I'm showing you a document I have marked as  
 6 Exhibit Rice 2. It was previously marked as Exhibit Morra  
 7 2. Take a minute and read it, please.  
 8 Have you had an opportunity to read it?  
 9 A. I have.  
 10 Q. Have you ever seen this document before?  
 11 A. I did. I have.  
 12 Q. When did you see it before?  
 13 A. In preparation for this deposition.  
 14 Q. When did you see it?  
 15 A. Within the last three weeks.  
 16 Q. Who provided you with the document?  
 17 A. Ms. Filiatraut.  
 18 Q. Was that the first time you saw it?  
 19 A. It's my recollection of the first time seeing  
 20 it, yes.  
 21 Q. Do you know where this document came from?  
 22 A. I don't.  
 23 Q. Other than from your counsel?  
 24 A. No.

Page 108

1 Q. Why don't you take a look at the third  
 2 paragraph of the document in Section B. B-3 provides, "It  
 3 appears the Umbrella Liability coverage level (\$75 million)  
 4 and property insurance coverage level (\$50 million primary  
 5 and \$30 million flood and earthquake) were sufficient in  
 6 1999 and 2000, but reduced to the \$2.5 million level in  
 7 2001 under a new policy. Possibly, this coverage reduction  
 8 may have been part of the initiative to consolidate like  
 9 purchases to leverage discounts under the PWC purchasing  
 10 initiative." Does that refresh your memory regarding what  
 11 the flood insurance limits were prior to 2001?  
 12 MS. FILIATRAUT: Objection.  
 13 A. I can't speak to what the flood insurance  
 14 levels were prior to 2000.  
 15 BY MR. HABER:  
 16 Q. Well, I think you were earlier --  
 17 MS. FILIATRAUT: For these properties, is  
 18 that --  
 19 A. For these properties?  
 20 BY MR. HABER:  
 21 Q. I thought you earlier told me that you thought  
 22 you learned that the coverage -- the flood coverage for  
 23 these properties was less prior to the year 2001?  
 24 A. It may have been. I'm not familiar with the

Page 109

1 St. Paul policies themselves. I -- I don't -- I don't know  
 2 what coverages were or were not available under the St.  
 3 Paul policies.  
 4 Q. So it's possible then you were wrong when you  
 5 told me earlier that you had less coverage before 2001 for  
 6 flood than you did during the 2001 period?  
 7 A. It's possible that I have -- I don't want to  
 8 make any affirmative statement about my knowledge of the  
 9 flood coverage at these two locations prior to 2000.  
 10 During the 2000 year, sometime in May or April, when  
 11 Omnicare, Inc. assumed the insurance responsibilities for  
 12 the CRO, at that point I can tell you what the insurances  
 13 were with respect to flood at these two locations.  
 14 Q. And that was the million dollar FEMA policy on  
 15 both properties and the \$2 1/2 million above that?  
 16 A. That's correct.  
 17 Q. So any information prior to when those policies  
 18 were put into place, you're not --  
 19 A. I'm not sure of.  
 20 Q. You're not very comfortable about?  
 21 A. I'm not very comfortable about.  
 22 Q. So you gave me a number earlier, but it may not  
 23 be right?  
 24 A. It may not be right.

28 (Pages 106 to 109)

Exhibit C





IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BARRY M. PORTNOY and : NO. 02-CV-2905  
GERARD M. MARTIN, as Trustees :  
for HUB PROPERTIES TRUST :

V. :

OMNICARE PHARMACEUTICS, INC. :

and :

OMNICARE CLINICAL RESERACH, INC. :

TUESDAY, FEBRUARY 11, 2003

Oral deposition of PAUL A. LEONARD,  
held at the Upper Dublin Township Municipal  
Building, 801 Loch Alsh Avenue, Fort Washington,  
Pennsylvania, commencing at 2:07 p.m., on the  
above date, before Deborah L. Schildkraut, a  
Professional Court Reporter and a Notary Public  
in the Commonwealth of Pennsylvania.

ESQUIRE DEPOSITION SERVICES  
1880 John F. Kennedy Boulevard, 15th Floor  
Philadelphia, Pennsylvania 19103  
(215) 988-9191

ESQUIRE DEPOSITION SERVICES

PAUL A. LEONARD

18

1 Virginia Drive was vacant?  
 2 A. I wouldn't know.  
 3 Q. Was there any flooding that you recall  
 4 after Fran in September of 1996 of that area, any  
 5 time between then and today?  
 6 A. There's been three federally declared  
 7 flood disasters in Upper Dublin in my tenure.  
 8 The first was Fran. The second was Floyd. The  
 9 third was Allison. You can check the dates. You  
 10 know, those are very well-documented storm  
 11 events.  
 12 Q. Well, my information is that Floyd was  
 13 September of '99. Does that sound familiar to  
 14 you?  
 15 A. Yes.  
 16 Q. My information is that Allison was June  
 17 of 2001. Does that sound familiar to you?  
 18 A. Yes.  
 19 Q. Were there any other floods that were not  
 20 federally declared disasters during that time?  
 21 A. There was flooding, yes.  
 22 Q. On how many occasions?  
 23 A. My estimate?  
 24 Q. Well, your best -- everything I'm asking

19

1 you is what you know.  
 2 A. In between these very large flood events  
 3 would be minor -- less severe flood events that  
 4 probably occurred on a -- at least a couple times  
 5 a year there would be flooding events in various  
 6 parts of the Township.  
 7 Q. I'm trying to limit my question to the  
 8 office park, though, as opposed to the Township  
 9 overall.  
 10 A. Would there be others? Yes. Their exact  
 11 dates and the frequency I can't be specific on.  
 12 Q. Does the Township keep records of those  
 13 flooding events?  
 14 A. In some cases we do. We've also begun to  
 15 do that. At several locations in the office park  
 16 we've placed marker posts with elevations so that  
 17 we can start to record that. I believe they went  
 18 in sometime in the last two years.  
 19 Q. After Allison or before?  
 20 A. I can't be specific.  
 21 Q. And when you say elevations, are you  
 22 talking about above-sea-level elevations?  
 23 A. Yes.  
 24 Q. And how were they helpful?

20

1 A. Mostly for emergency responders so that  
 2 they know whether it's safe to drive a vehicle  
 3 into the water or not. We also use it for making  
 4 decisions about closing roadways.  
 5 Q. And what do those markers look like?  
 6 A. They're 6-inch PVC pipe that are white  
 7 with red letters on it and circles for the  
 8 various elevations.  
 9 Q. Are any of those markers on Virginia  
 10 Drive?  
 11 A. Yes, at the intersection with Delaware.  
 12 Q. Is that the closest marker that you're  
 13 aware of to 525 Virginia Drive?  
 14 A. I believe so.  
 15 Q. Are there any others that are further up  
 16 Virginia Drive, further north of Virginia Drive?  
 17 A. I don't think so. I think the other one  
 18 is located on Highland Avenue at Camp Hill, which  
 19 would be --  
 20 Q. Virginia and Camp Hill?  
 21 A. No, Highland and Camp Hill, which would  
 22 be one intersection away from the subject  
 23 property.  
 24 Q. Who would I ask at Upper Dublin about any

21

1 records that the Township has about those floods  
 2 that are not federal disaster floods? Are you  
 3 the person to ask?  
 4 A. Yes.  
 5 Q. Would you agree to look for any of those  
 6 records and produce them to your counsel?  
 7 A. Yes, but I think they're going to be  
 8 skimpy. We are generally tied up doing other  
 9 things during these floods other than keeping  
 10 records on them.  
 11 Q. Are you a fire fighter?  
 12 A. Yes.  
 13 Q. Are you with any particular company?  
 14 A. Right now I'm a volunteer with the Fort  
 15 Washington Volunteer Fire Company.  
 16 Q. Does the Fort Washington Volunteer Fire  
 17 Company get involved in responding to flood  
 18 situations?  
 19 A. Yes.  
 20 Q. Do they keep records of their own about  
 21 when they do that?  
 22 A. They keep records of all their calls. I  
 23 am not the custodian of those records.  
 24 Q. Who is?

PAUL A. LEONARD

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1 A. They would look at the maps. Many of  
 2 them engage engineers to verify the exact  
 3 location of a flood zone to their property. The  
 4 maps are generally at a very large scale. So a  
 5 lot of property owners will specifically look at  
 6 a property related to elevation.  
 7 Q. I guess as an owner it's probably the  
 8 kind of thing that might turn up in a title  
 9 search or something like that?  
 10 A. I guess you would guess that. I don't do  
 11 a lot of title searches.  
 12 Q. Is there any way for a tenant to know  
 13 that a property is in a flood zone, somebody who  
 14 doesn't actually own the property?  
 15 MR. HLENNER: Do you want to  
 16 phrase that to where it's Township  
 17 specific?  
 18 MR. HABER: Yes, within the  
 19 Township.  
 20 A. When inquiries are made to the Township  
 21 about whether a property is in a flood zone or  
 22 not, we refer them to the flood maps and also, on  
 23 a routine basis, suggest that they verify it  
 24 themselves through an engineering study, that

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1 sort of thing.  
 2 Q. You make that information available to  
 3 anybody who makes inquiries; right?  
 4 A. We give out the maps on a regular basis,  
 5 yes.  
 6 Q. It's not the kind of information you  
 7 would want to keep from a tenant, for example,  
 8 before they make a decision whether or not they  
 9 want to move in?  
 10 A. No, we don't keep it from anybody.  
 11 MR. HABER: Thank you.  
 12 - - -  
 13 (Whereupon, this deposition  
 14 was concluded at 4:50 p.m.)  
 15 - - -  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

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## CERTIFICATION

1  
 2  
 3 I, DEBORAH L. SCHILDKRAUT, a  
 4 Certified Court Reporter and Notary Public for  
 5 the Commonwealth of Pennsylvania, do hereby  
 6 certify the foregoing to be a true and accurate  
 7 transcript of my original stenographic notes  
 8 taken at the time and place hereinbefore set  
 9 forth.  
 10  
 11  
 12  
 13

14 Deborah L. Schildkraut  
 15 Certified Reporter  
 16 Notary Public

17 DATED: \_\_\_\_\_  
 18 (The foregoing certification of  
 19 this transcript does not apply to any  
 20 reproduction of the same by any means,  
 21 unless under the direct control and/or  
 22 supervision of the certifying reporter.)  
 23  
 24

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## ACKNOWLEDGEMENT OF DEPONENT

1  
 2  
 3  
 4  
 5 I, \_\_\_\_\_, do  
 6 hereby certify that I have read the foregoing  
 7 pages of this transcript; and that the same is a  
 8 correct transcription of the answers given by me  
 9 to the questions therein propounded, except for  
 10 the corrections or changes in form or substance  
 11 if any, noted in the attached Errata Sheet.  
 12  
 13

14 DATE PAUL A. LEONARD  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24

Exhibit D



DAVID MORRA

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 02-CV-2905

BARRY M. PORTNOY and GERARD ) DEPOSITION UPON  
M. MARTINAS, trustees for  
HUB PROPERTIES TRUST, ) ORAL EXAMINATION  
Plaintiffs,) OF  
- vs - ) DAVID MORRA  
OMNICARE PHARMACEUTICS, INC., )  
and OMNICARE CLINICAL  
RESEARCH, INC., )  
Defendants.)

ORIGINAL

TRANSCRIPT OF DEPOSITION, taken by and  
before ELISABETTA L. MAADDI, Professional Reporter and  
Notary Public, at the Law Offices of OBERMAYER,  
REBMANN, MAXWELL & HIPPEL, One Penn Center, 1617 JFK  
Boulevard, 19th Floor, Philadelphia, Pennsylvania, on  
Tuesday, March 4, 2003, commencing at 10:30 a.m.

REPORTING SERVICE ASSOCIATES (RSA)

A VERITEXT COMPANY

1845 Walnut Street - 15th Floor  
Philadelphia, Pennsylvania 19103

(215) 241-1000

DAVID MORRA

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1 person in the business, so he would have  
2 communicated up to the corporation.

3 BY MR. HABER:

4 Q. Would he have communicated to you first on the  
5 issue?

6 A. To make me aware of it, yes.

7 Q. Okay. And who would he have then spoken to at  
8 the corporation?

9 A. Janice Rice would have been the person at  
10 Omnicare that would have -- that that would have been  
11 communicated to, and then she would have taken that to  
12 Omnicare's broker to review that, that whole issue, to  
13 determine if there was enough insurance, you know,  
14 based on their knowledge of insurance.

15 Q. Okay. After that information was passed on,  
16 what response was given to Mr. McDevitt?

17 A. Well, ultimately my understanding is that we  
18 concluded, the company concluded, the corporation  
19 concluded, there was adequate insurance for that  
20 business and that information would have been  
21 communicated.

22 Q. Back to Mr. McDevitt?

23 A. Yes.

24 Q. Would you agree with me that after the flood of

DAVID MORRA

13

1 2001 that the conclusion that the company was  
2 adequately insured was an inaccurate one?

3 A. Post-flood, yes.

4 Q. All else being equal, I imagine you would have  
5 preferred having greater insurance coverage to cover  
6 your losses?

7 MR. SHARE: Object to form. Object to the  
8 question. You can answer the question.

9 THE WITNESS: The question being would I have  
10 desired to have had insurance that was adequate?  
11 Is that the question?

12 MR. HABER: I'll have her read it back to  
13 you.

14 THE COURT REPORTER: QUESTION: "All else  
15 being equal, I imagine you would have preferred  
16 having greater insurance coverage to cover your  
17 losses?"

18 THE WITNESS: I imagine I would have  
19 preferred to have insurance covering my losses.

20 BY MR. HABER:

21 Q. So you agree with my statement?

22 A. As stated, yes.

23 Q. Okay. Do you know whether or not the insurance  
24 year that covered the June 2001 flood, was that your

DAVID MORRA

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1 Q. I didn't hear what you said there at the end.

2 A. I said I wouldn't ignore it.

3 Q. Okay.

4 A. An issue was brought up. I don't know when the  
5 meeting took place. It was brought up. It sounds like  
6 a reasonable response that we would vetted it up  
7 through the system and have a response come back.

8 Q. Well, he said the meeting took place in January  
9 of 2001.

10 A. Okay. I don't have --

11 Q. He also said at the meeting that flood  
12 insurance was discussed at the meeting and that at the  
13 time he talked with you about the fact that both  
14 facilities that he was running this business in were  
15 located in a flood plain. Does that refresh your  
16 memory of the meeting?

17 A. No, it does not.

18 Q. Do you recall Dr. Feld ever telling you that  
19 these two facilities were located in a flood plain  
20 pre-tropical storm Allison?

21 A. No, I'm not aware of -- don't recall the flood  
22 plain designation. I think we were all aware that was  
23 an area prone to flooding because of previous history.  
24 The more germane issue really is it's prone to flooding



DAVID MORRA

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1 whether it's a flood plain or not. I don't recall that  
2 specific terminology.

3 Q. Well, do you remember having any meetings prior  
4 to tropical storm Allison with Dr. Feld discussing the  
5 proclivity of flooding at the 525 or 425 facilities?

6 A. Well, again, we know the history of the site,  
7 that was well-known. We knew that the previous  
8 building, 425, had been under some level of water with  
9 the flood that occurred in 1999, I believe. And so we  
10 knew the whole issue of the propensity for flooding to  
11 occur in that site at that site. We also knew that 525  
12 had never been breached by water. It had come up close  
13 but never quite, you know, breached the building  
14 itself.

15 Q. Prior to tropical storm Allison?

16 A. Yes.

17 Q. What is the PSI executive committee?

18 A. That would have been Dr. Feld and his staff,  
19 his direct reports.

20 Q. Paragraph six of section B reads "The only  
21 response the division received from these numerous  
22 inquiries was a very general E-Mail from Kirit Patel."  
23 K-I-R-I-T, P-A-T-E-L. "The message was a verbal relay  
24 from Tim Sullivan with inaccurate information stating

DAVID MORRA

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1 insurance to protect them from a flood of the nature  
2 that occurred?

3 A. Okay. Let's back up a little bit here.  
4 Information as again was reviewed here had been  
5 requested and supplied, requested by Omnicare, Inc.,  
6 from Pharmaceuticals, and that information was provided,  
7 to the best of my knowledge, it was provided so that  
8 Omnicare along with its broker could determine what  
9 level of insurance was adequate, appropriate. Upon  
10 questioning what level of insurance we had, the answer  
11 we got back was \$50 million.

12 So your question doesn't make sense to me, if I  
13 can be candid, because you're asking me why we didn't  
14 have enough insurance. I'm saying, as far as I knew,  
15 we had enough insurance until after the fact, unless  
16 I'm misinterpreting the question.

17 Q. I'm obviously not making myself clear enough  
18 for you. Let me try a different way.

19 It is a fact that you did not have sufficient  
20 insurance to cover you for the flood loss you suffered  
21 as a result of the tropical storm Allison, right?

22 A. In retrospect, yes.

23 Q. Not only in retrospect, it's a fact that at the  
24 time you didn't have enough insurance? You just didn't

DAVID MORRA

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1 have it? It didn't cover all your losses, right?

2 A. Okay.

3 Q. No qualification, right?

4 A. Yes.

5 Q. Okay. I'm trying to understand why it was that  
6 more insurance coverage for flood risks was not  
7 purchased than was actually purchased? Now, I  
8 understand that you thought you had \$50 million and you  
9 were covered, but now you've had --

10 A. I understand the question.

11 Q. You've had a year or two since this has  
12 occurred to try to figure out what really went on here  
13 and what happened. Do you have any further information  
14 for me than what you've already provided?

15 A. No. I would say I don't know still why it  
16 didn't happen.

17 Q. You don't have any information to suggest that,  
18 for example, the insurance broker could not purchase or  
19 make available for you more flood coverage than was  
20 provided?

21 A. No, I don't.

22 Q. So nobody's ever said to you, all we could  
23 offer you is two-and-a-half million dollars in flood  
24 coverage --

Exhibit E



DAVID MORRA

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 02-CV-2905

BARRY M. PORTNOY and GERARD ) DEPOSITION UPON  
M. MARTIN, as Trustees for  
HUB PROPERTIES TRUST, ) ORAL EXAMINATION

Plaintiffs, ) OF

- vs - ) DAVID MORRA

OMNICARE PHARMACEUTICS, INC.)  
and OMNICARE CLINICAL  
RESEARCH, INC., )

Defendants. )

TRANSCRIPT OF DEPOSITION,  
taken by and before F. DAVID DAMIANI, Registered  
Professional Reporter and Notary Public, at the LAW  
OFFICES OF OBERMAYER, REBMANN, MAXWELL & HIPPEL,  
LLP, 19th Floor, One Penn Center, 1617 JFK  
Boulevard, Philadelphia, Pennsylvania, on Tuesday,  
October 29, 2002, commencing at 10:07 a.m.

REPORTING SERVICE ASSOCIATES (RSA)

COPY

DAVID MORRA

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1 A. Yes, we did.

2 Q. Okay. Where was -- where were the  
3 facilities of pharmaceutical located in March of  
4 2000?

5 MR. SHARE: Pharmaceuticals, you  
6 mean?

7 BY MR. HABER:

8 Q. Pharmaceuticals.

9 A. Well, there were two buildings in Fort  
10 Washington. One was designated as 525 Virginia,  
11 and the other one was 425.

12 Q. 525 Virginia?

13 A. Yes.

14 Q. And 425?

15 A. 425, I think -- I don't think it was  
16 Virginia.

17 Q. Delaware?

18 A. Delaware, maybe.

19 Q. Maybe 415?

20 A. Whatever. Two buildings within a stone's  
21 throw of each other.

22 Q. Okay. What functions were performed in  
23 525 Virginia?

24 A. Just about everything. Analytical,

DAVID MORRA

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1 A. I'm not aware of anyone that knew that it  
2 was in a flood plane.

3 Q. Did anyone at the company have any  
4 information regarding the propensity for flooding  
5 in that location?

6 A. Yes.

7 Q. What information are you aware of?

8 A. Well, I was aware that there had been a  
9 flood in, I believe, 1996, and again in 1999, prior  
10 to my joining the company.

11 Q. How did you become aware of that?

12 A. Well, my first visit to Fort Washington  
13 was actually prior to my official employment. I  
14 toured the 425 building, which had had some flood  
15 damage in the last flood, so that's how I became  
16 aware that there had been a flood, at least in  
17 1999.

18 Q. Did you -- when did you learn about the  
19 1996 flood that you talked about?

20 A. You know, I'm not sure if it was then or  
21 if it was after the third flood. I honestly don't  
22 recall when I knew about that one.

23 Q. Is that something that was of concern to  
24 you as the new CEO of the Pharmaceuticals company?

DAVID MORRA

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1 Q. Did your company have flood insurance?

2 A. The business was insured.

3 Q. Did it have flood insurance?

4 MR. SHARE: Which business are  
5 you referring to?

6 MR. HABER: Pharmaceuticals. The  
7 tenant.

8 THE WITNESS: I believe we had  
9 flood insurance in effect.

10 BY MR. HABER:

11 Q. And that was -- my question was directed  
12 to the 2001 flood. Do you know whether or not  
13 there was flood insurance in place for the earlier  
14 floods that you mentioned?

15 A. No, I don't know that there was.

16 Q. Do you know that there wasn't?

17 A. No, I don't know that there wasn't.

18 Q. Who would I ask at the company to find out  
19 that information?

20 A. Well, we would probably go back to  
21 Omnicare, Inc. Someone there to see if it was in  
22 place back then.

23 Q. Who would you ask at Omnicare, Inc.?

24 A. Janice Rice.



DAVID MORRA

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1 Q. And how were you aware that those four  
2 customers refused to do business with  
3 Pharmaceuticals, if it remained in 525 Virginia?

4 A. Well, with Astra Zeneca, which was a  
5 current customer, and Novartis, essentially it was  
6 just verbal communication with Dr. Feld primarily.  
7 He was my conduit, you know, for most of the  
8 information, virtually all of the information.

9 Q. Dr. Feld had an oral communication with  
10 Astra Zeneca and Novartis, and he told you what it  
11 is you told me?

12 A. That they -- yes, that those companies did  
13 not wish to do business with us in an area that was  
14 prone to flooding.

15 Q. Is there any written communication between  
16 your company and these customers reflecting that  
17 concern?

18 A. I'm aware of a written communication from  
19 Astra Zeneca to that effect.

20 Q. Any other written communication about  
21 which you're aware of?

22 A. I'm not aware of other written  
23 communications.

24 Q. Did you, yourself, have any conversations

DAVID MORRA

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1 conduit for that kind of information.

2 Q. Now, you identified four companies, Astra  
3 Zeneca, Sanofi, Durect and Novartis as companies  
4 who said that they would not come back. Do you  
5 have any information regarding any of your other  
6 customers who said that they would not come back if  
7 you were to continue operations in 525 Virginia?

8 A. I do not.

9 Q. Who would I ask that question to, who  
10 might have further information?

11 A. Well, again, my primary conduit would have  
12 been Dr. Feld.

13 Q. Are you aware of any of the customers  
14 identified on DD No. 10 who wanted you to continue  
15 operations in 525 Virginia Avenue after the flood?

16 A. Who specifically wanted us to? No, I'm  
17 not. I never heard anyone who specifically wanted  
18 us to continue.

19 Q. Again, if I wanted to get that information  
20 and get some information beyond what you are aware  
21 of, would that be Dr. Feld as the person to whom  
22 you would go?

23 A. Yes.

24 Q. Prior to the flood, was the Pharmaceuticals

DAVID MORRA

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1 you to return and resume operations in 525

2 Virginia?

3 A. I don't think there's any question that we  
4 could resume or at least get the operation back up  
5 and cleaned up and all, but in terms of customers  
6 being attracted, when 40 percent -- let's say 40  
7 percent or so, a big piece of that was Astra  
8 Zeneca, 38 to 40 percent, something like that, of  
9 revenues is pulled out from under you, you know,  
10 you're not going to have a viable business.

11 Q. Astra Zeneca was -- what did you say, it  
12 was about a third of your business there?

13 A. It's here somewhere. Of the Pharmaceuticals  
14 business, it was about 39 percent of revenues.

15 Q. So almost 40 percent of your revenue for  
16 the --

17 A. Yes.

18 Q. That's for the second quarter of 2001?

19 A. Yes. Um-hum. Yes.

20 Q. And Astra Zeneca said absolutely no way,  
21 no how will we return to 525 Virginia?

22 A. Yes.

23 Q. You made reference to a document that you  
24 were aware of. I'm not sure I'm familiar with

DAVID MORRA

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1 A. I believe somewhere about 18 to 24 months.

2 Q. Okay. Before him, who was serving in his  
3 role?

4 A. Let's see. There was a lady by the name  
5 of -- I can't remember. I'm trying to think of it.  
6 I just don't remember her name.

7 Q. Maybe after lunch if you think of it, you  
8 can tell me.

9 A. Um-hum.

10 MR. HABER: Let's go off the  
11 record.

12 (At this time, a discussion was  
13 held off the record.)

14 (At this time, 1:03 p.m., a  
15 luncheon recess was taken, resuming at  
16 1:54 p.m.)

17 BY MR. HABER:

18 Q. Before our lunch break, you were telling  
19 me about anecdotal information regarding other  
20 customers who you thought might not return. Tell  
21 me about that.

22 A. Well, as quite a number of people were  
23 making customer contacts to inform them about the  
24 flood, the status of their project, in the course

DAVID MORRA

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1 of that, I can't name specifically, but what I was  
2 told we were hearing was a high level of reluctance  
3 to go back to the site.

4 Q. And who reported that to you?

5 A. Dr. Feld would have.

6 Q. The people who were in contact with the  
7 customers, who would have relayed that information  
8 to Dr. Feld, would that have been the names  
9 identified on DD No. 9? I'm referring to the  
10 assigned to column.

11 A. Yes. Those -- yes. A number of them. I  
12 don't know if it's complete, but certainly many of  
13 these people were making calls and taking feedback  
14 from customers.

15 Q. And can you tell me a little bit more  
16 about who these employees are, the full names?

17 A. Those that I recognize -- I recognize them  
18 all, but some of them I had very little contact  
19 with. Do you want me to just go down the list?

20 Q. Yes, please.

21 A. Okay. Braden, Bob Braden was a  
22 salesperson.

23 Q. Is he still an employee of Omnicare --

24 A. No.

DAVID MORRA

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1 product.

2 Q. Okay. The warehouse portion on the first  
3 floor, was that the largest part of the first  
4 floor?

5 A. The largest single area would have been  
6 the warehouse.

7 Q. And you said product was stored in the  
8 warehouse?

9 A. Yes.

10 Q. Could you tell me what it looked like in  
11 the warehouse?

12 A. It had shelving, racks, shelving where  
13 product was stacked on those -- on those shelves.

14 Q. Along the walls or throughout the space?

15 A. Well, throughout the space. You know, you  
16 have rows of shelves and racks that you put product  
17 on.

18 Q. Was any of the product on the floor?

19 A. I believe most of the product was -- you  
20 can't put it on the floor. It would have to be on  
21 pallets first. But I believe that most of the  
22 finished product would have been on the shelves,  
23 actually up, you know, a couple of feet at least  
24 over the floor.

DAVID MORRA

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1 Q. A couple feet?

2 A. Yeah. A couple feet.

3 Q. So the bottom shelf would have been, say,  
4 two feet off the floor?

5 A. Yeah. Probably at least two to three feet  
6 off the floor, yeah.

7 Q. And the pallets that you said that were  
8 there on the floor, was that not finished product?  
9 If something was on a pallet?

10 A. Well, if it was ready to be shipped, it  
11 could be. More likely it would be components that  
12 were, you know, like cardboard boxes -- corrugated  
13 boxes that are flat, you know, just stacked in  
14 bundles. The vials, bottles, closers or whatever,  
15 you name it, labels.

16 Q. What was the floor like in the warehouse?

17 A. Concrete floor. Non-descript, I guess.

18 Q. Nothing on top of the concrete floor?

19 Nothing built on top of it?

20 A. Nothing built on top or covering it, like  
21 linoleum?

22 Q. Right.

23 A. No, no, just bare -- bare concrete.

24 Q. There was no floor built on top of the

DAVID MORRA

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1 Q. Can you tell me what kind of business  
2 services was provided by Pharmaceuticals in 525  
3 Virginia post June 2001?

4 A. Immediately post June 2001 no services.  
5 It was strictly a recovery effort.

6 Post September, maybe, the September time  
7 frame, we talked about it, there was some  
8 analytical services being done there, and some  
9 stability or storage work being done there. Later  
10 in the year, one -- manufacturing for one product,  
11 one customer.

12 MR. HABER: Can you read back  
13 the answer, please?

14 (At this time, the court  
15 reporter read back from the record as was  
16 requested.)

17 BY MR. HABER:

18 Q. Who was Pharmaceuticals performing  
19 analytical services for in 525 Virginia post June  
20 2001?

21 A. I don't know the specific customers.

22 Q. Why did Pharmaceuticals perform analytical  
23 services in 525 Virginia post June 2001?

24 A. The equipment was operational and



DAVID MORRA

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1 available to do that work.

2 Q. Analytical services was up on the second  
3 floor, right?

4 A. Yes, up on the second floor.

5 Q. So after you got the equipment  
6 recalibrated, so long as your customers would  
7 allow, you could perform the services on the second  
8 floor?

9 A. That's correct, yes.

10 Q. You don't remember which customers,  
11 though, that you performed that services for?

12 A. No, I wouldn't know that.

13 Q. That was not something that you --  
14 analytical services you didn't move to King of  
15 Prussia, right?

16 A. That's correct, we did not move that to  
17 King of Prussia.

18 Q. Did you have some other location where you  
19 were doing analytical services post flood?

20 A. No.

21 Q. And stability services,, again, that's  
22 determining how well the drugs hold up under  
23 certain circumstances over a certain period of  
24 time, right?

DAVID MORRA

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1 A. General description, yes.

2 Q. And do you know what customers asked you  
3 to continue to do stability testing in 525 Virginia  
4 post June 2001?

5 A. Not specifically.

6 Q. Do you know generally?

7 A. It's a specific question. For me to  
8 answer who, I would have to name names, and I  
9 don't know who specifically we were doing business  
10 with.

11 Q. Who would know the answer to those  
12 questions regarding the entities for whom you  
13 performed services in the building post flood?

14 A. That would be a matter of record. I'm  
15 sure within our finance group, the people who  
16 document the revenues that we generate in the  
17 company.

18 Q. Are you telling me this fellow will know  
19 tomorrow?

20 A. Well, I'm telling you that someone in his  
21 department might know. I doubt that Ron  
22 specifically would know.

23 Q. You said you were also doing storage work  
24 on the premises.

DAVID MORRA

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1 A. Well, stability -- that was -- that  
2 comment was related to stability storage, not  
3 general storage.

4 Q. Not warehouse?

5 A. Not warehouse. No warehousing done there.

6 Q. So you never did any further warehousing  
7 after the flood?

8 A. Not in 525.

9 Q. Where did you do warehousing?

10 A. We did some very minimal light warehousing  
11 in King of Prussia.

12 Q. You also mentioned that you did one  
13 manufacturing project in the building at some point  
14 after the flood.

15 A. Yes.

16 Q. Where was that? On the first floor or  
17 second?

18 A. On the first floor.

19 Q. What sort of manufacturing did you do post  
20 flood?

21 A. We were running a packaging -- what we  
22 call primary packaging. That's taking an actual  
23 tablet, in this case putting it into a foil -- a  
24 foil pack. We were doing that on the first

DAVID MORRA

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1 floor.

2 Q. Did you need equipment to do that?

3 A. Yes.

4 Q. Did you use the equipment that you owned  
5 prior to the flood to perform that work?

6 A. No. We didn't use it.

7 Q. Did you buy new equipment?

8 A. We did.

9 Q. And you put the new equipment in 525 on  
10 the first floor?

11 A. Yes.

12 Q. Was this the Virbac --

13 A. Virbac.

14 Q. Virbac project?

15 A. Yes.

16 Q. V-I-R-B-A-C?

17 A. V-I-R-B-A-C.

18 Q. When did you do this work for Virbac in  
19 525 Virginia?

20 A. I believe that started up again -- again,  
21 it would have actually started up -- it never  
22 started up prior to that. It started up in  
23 September, I believe, sometime in September of  
24 2001.

DAVID MORRA

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1 Q. It started in September of 2001, and when  
2 did it end?

3 A. It ended probably some time in April or  
4 May of this year.

5 Q. How many employees did you have working on  
6 the Virbac manufacturing project in 525 Virginia?

7 A. Rough guess, about 40. Thirty to forty  
8 people.

9 Q. Did any of those employees report any  
10 medical problems as a result of working in the  
11 building during that time period?

12 A. Not to my knowledge.

13 Q. Is Virbac a name of a company?

14 A. Yes, it is.

15 Q. If we look back at DD No. 10, Virbac had  
16 provided you with, or you had backlog for Virbac in  
17 the amount of two point eight million dollars.  
18 Would you agree with me?

19 A. I remember that. Yeah, I remember that.

20 Q. Had you done some of the work for Virbac  
21 prior to the flood?

22 A. No.

23 Q. So Virbac was a new project that you had  
24 contracted for prior to the flood, but were unable

DAVID MORRA

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1 to realize any of the revenue until after the  
2 flood?

3 A. Yes. That's correct.

4 MR. HABER: Let's go off the  
5 record.

6 (At this time, a discussion was  
7 held off the record.)

8 BY MR. HABER:

9 Q. So you had 30 to 40 employees in the  
10 building performing a manufacturing job for Virbac  
11 between September of 2001 and May of 2002?

12 A. That's correct.

13 Q. Did you pay any rent to the landlord for  
14 your use of the building during that time period?

15 A. We did not.

16 Q. Is the Virbac manufacturing project  
17 completed?

18 A. It been moved to another site.

19 Q. Okay. So you haven't --

20 A. It's an ongoing relationship.

21 Q. But the two point eight million dollars in  
22 backlog, have you realized all that revenue now?

23 A. I believe we've recognized most of it.

24 Q. Is there a reason why that work had to be

Exhibit F



RONALD L. GREENSPAN

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 02-CV-2905

BARRY M. PORTNOY and GERARD ) DEPOSITION UPON  
M. MARTIN, as Trustees for  
HUB PROPERTIES TRUST, ) ORAL EXAMINATION

Plaintiffs, ) OF

- vs - ) RONALD L. GREENSPAN

OMNICARE PHARMACEUTICS, INC.)  
and OMNICARE CLINICAL  
RESEARCH, INC., )

Defendants. )

TRANSCRIPT OF DEPOSITION,  
taken by and before F. DAVID DAMIANI, Registered  
Professional Reporter and Notary Public, at the LAW  
OFFICES OF OBERMAYER, REBMANN, MAXWELL & HIPPEL,  
LLP, 19th Floor, One Penn Center, 1617 JFK  
Boulevard, Philadelphia, Pennsylvania, on  
Wednesday, October 30, 2002, commencing at 10:04  
a.m.

REPORTING SERVICE ASSOCIATES (RSA)



## RONALD L. GREENSPAN

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1 was restored to the condition it was in prior to  
 2 the flood?  
 3 A. No, it was not.  
 4 Q. What was the difference in the condition  
 5 after the cleanup was finished as compared to the  
 6 condition the building was in prior to the flood?  
 7 A. The most significant thing is the fact  
 8 that the drywall probably four or five feet up from  
 9 the floor was removed in certain sections of the  
 10 building -- I guess in all sections of the  
 11 building, and ceiling tiles and other things I  
 12 think were removed that were there previous to the  
 13 flood.  
 14 Q. Yesterday Mr. Morra told me a little bit  
 15 about drywall and the bottom of the wall being wet  
 16 and, therefore, the bottom was removed, and then  
 17 the top was left on the studs. Is that what you  
 18 are referring to?  
 19 A. Right.  
 20 Q. So you never replaced the drywall that was  
 21 removed?  
 22 A. We replaced some of the drywall that was  
 23 removed.  
 24 Q. How did you decide what drywall to replace

35

1 and what not to replace?  
 2 A. We have this one customer, Virbac, that we  
 3 were performing work for in the building, and  
 4 whatever was necessary to do that work was  
 5 refurbished.  
 6 Q. You said there were ceilings that were  
 7 damaged as well?  
 8 A. I don't know if they were damaged. Some  
 9 of the tiles were taken out of the ceiling.  
 10 Q. Why were the tiles taken out of the  
 11 ceiling?  
 12 A. Because it was determined they needed to  
 13 be taken out.  
 14 Q. By whom?  
 15 A. Whoever was involved at the time. I mean,  
 16 I don't know if it would have been Belfor or TGI.  
 17 I have no idea who would have recommended it.  
 18 Q. And do you know why the ceiling tiles were  
 19 not replaced after the cleanup?  
 20 A. Well, there are certain parts of the  
 21 building we didn't do anything other than cleaning  
 22 the building, and we took out the drywall. Took  
 23 out ceiling tiles and I think floor tiles.  
 24 Q. You took out floor tiles as well?

36

1 A. I think so.  
 2 Q. What did you do with the ceiling tiles  
 3 that you took out?  
 4 A. I have no idea. I assume they threw them  
 5 away, but I don't know.  
 6 Q. Well, the flood didn't get up on the  
 7 second floor, did it?  
 8 A. No.  
 9 Q. And the ceiling presumably was above the  
 10 flood, right?  
 11 A. Right.  
 12 Q. Do you have any explanation as to why they  
 13 would have removed ceiling tile?  
 14 A. No.  
 15 Q. You just know that they did?  
 16 A. Right.  
 17 Q. And you know that how?  
 18 A. Well, I know now because they're not  
 19 there, but I was told they were taking them out.  
 20 Q. How do you know they're not there?  
 21 A. Because I've been to the building.  
 22 Q. Oh, I was under the impression that you  
 23 hadn't been back to the building after the flood.  
 24 A. No, not really after the flood, but after

37

1 the -- several months later I was there.  
 2 Q. Oh, okay. How many times have you been in  
 3 the building after the flood?  
 4 A. Probably three to six times. I don't  
 5 know.  
 6 Q. So the things that you noticed that are  
 7 different are the walls haven't been replaced,  
 8 ceiling tiles are gone and some of the flooring is  
 9 gone?  
 10 A. Right.  
 11 Q. Anything else that's different?  
 12 A. Well, the equipment is not where it used  
 13 to be.  
 14 Q. Much of the equipment is not there, right?  
 15 A. Right.  
 16 Q. In fact, it's out in trailers in the  
 17 parking lot?  
 18 A. Well, not any longer, but, yes.  
 19 Q. Not any --  
 20 A. Not any longer.  
 21 Q. Where is the equipment now?  
 22 A. In the building.  
 23 Q. Oh, the equipment has been moved back into  
 24 the building from the trailers?

## RONALD L. GREENSPAN

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1 A. Yes.  
 2 Q. Why is that?  
 3 A. Well, there was a concern about a  
 4 hurricane or a storm that was coming up through the  
 5 area just recently, and we were informed by the  
 6 fire marshal or the building -- whoever came by and  
 7 said they didn't want those out there full of our  
 8 equipment in case the rain waters came and took  
 9 them away.  
 10 So we were required within 48 hours to  
 11 move them, to remove the -- whatever you call the  
 12 trailers. So the only way to do that was to take  
 13 the equipment and put it back in the building so  
 14 the trailers were empty.  
 15 Q. And then you removed the trailers from the  
 16 premises?  
 17 A. I think the trailers were removed. I have  
 18 not been back since that occurred.  
 19 Q. So somebody recently emptied all of the  
 20 trailers of all of the old equipment and put them  
 21 back -- put the equipment back into the building?  
 22 A. Yeah.  
 23 Q. The equipment that was in the trailers,  
 24 had that ever been cleaned?

39

1 A. Yeah, I think it was cleaned by TGI to the  
 2 extent of making it, you know, safe, for lack of a  
 3 better term. Mud or whatever was taken off of it.  
 4 Q. But it was equipment that you didn't  
 5 intend to reuse in the business, right?  
 6 A. Well, I don't think that had ever been  
 7 finalized, what was going to happen to that  
 8 equipment.  
 9 Q. Were you planning on selling it?  
 10 A. That was one of the options.  
 11 Q. Was it a feasible option?  
 12 A. Yes, I think it's a feasible option.  
 13 Q. Is there a market for the used equipment?  
 14 A. Well, I had people who were interested in  
 15 all the equipment, and they were interested in that  
 16 included.  
 17 Q. For use other than scrap?  
 18 A. I can't tell you what they were going to  
 19 use it for.  
 20 Q. Were you selling it at a price that would  
 21 indicate it would be used for something other than  
 22 scrap?  
 23 A. It's hard to answer that question.  
 24 Q. Okay. Well, let's do it this way then.

40

1 Are you familiar with your equipment schedule that  
 2 would indicate the value of the equipment owned by  
 3 the Pharmaceuticals company?  
 4 A. I would have information in terms of what  
 5 we paid for it.  
 6 Q. Okay. How much did you pay for all the  
 7 equipment in the building?  
 8 A. I don't know.  
 9 Q. Can you approximate?  
 10 A. No, I'm sorry, I can't.  
 11 Q. Well, is it fair to say that the  
 12 equipment, you paid in excess of a million dollars  
 13 for all the equipment?  
 14 A. Yes.  
 15 Q. Is it also fair to say that you paid in  
 16 excess of three million dollars for all the  
 17 equipment?  
 18 A. Yes.  
 19 Q. Okay. What price were you talking about  
 20 selling the equipment for?  
 21 A. Somewhere around \$350,000.00.  
 22 MR. SHARE: Can we take a  
 23 one-minute bathroom break?  
 24 MR. HABER: Sure.

41

1 (At this time, a short break was  
 2 taken.)  
 3 BY MR. HABER:  
 4 Q. How did the flood impact on the profit of  
 5 the Pharmaceuticals company?  
 6 A. They disappeared.  
 7 Q. Well, you told me that you had profits of  
 8 two million dollars the year before, and then the  
 9 year of the flood you told me you lost money, but  
 10 you don't know how much. Is that the entire  
 11 picture?  
 12 A. Yeah, I think that's the entire picture.  
 13 Q. Is that all I'm going to get from you  
 14 today?  
 15 MR. SHARE: Off the record.  
 16 (At this time, a discussion was  
 17 held off the record.)  
 18 MR. HABER: Let's go back on the  
 19 record.  
 20 BY MR. HABER:  
 21 Q. So it's also fair to say that you don't  
 22 have -- you don't have knowledge of prior years  
 23 performance of the Pharmaceuticals company to compare  
 24 the losses that you suffered in the year 2001? Is

## RONALD L. GREENSPAN

<p style="text-align: right;">42</p> <p>1 that right?</p> <p>2 A. I don't have that information with me.</p> <p>3 Q. Do you have any idea whether or not the</p> <p>4 Pharmaceuticals company was profitable in each and</p> <p>5 every year prior to the year 2000?</p> <p>6 A. No, I don't know.</p> <p>7 Q. Do you have any idea whether or not the</p> <p>8 Pharmaceuticals company lost money in any year prior</p> <p>9 to the year 2000?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know what efforts were made to</p> <p>12 resume operations in 525 Virginia after the flood?</p> <p>13 A. As I mentioned earlier, they cleaned up</p> <p>14 the building, the analytical operations, which are</p> <p>15 on the second floor, were continued to operate in</p> <p>16 some form or fashion. We put the Virbac business</p> <p>17 back in there at some point. Those are the only</p> <p>18 things that I'm aware of that we did to the</p> <p>19 building to make it be able to generate revenue.</p> <p>20 Q. Is there any reason why you didn't try to</p> <p>21 put the building back in the same condition it was</p> <p>22 in prior to the flood so that you could resume full</p> <p>23 service operations?</p> <p>24 A. There was concern that because of the</p>	<p style="text-align: right;">44</p> <p>1 flood plane?</p> <p>2 A. Do I know that? Yes.</p> <p>3 Q. When did you first know that?</p> <p>4 A. Probably sometime after the flood.</p> <p>5 Q. As part of your duties as CFO, are you</p> <p>6 also responsible for insurance?</p> <p>7 A. Not directly, no.</p> <p>8 Q. Does somebody work for you -- is somebody</p> <p>9 who worked for you responsible for the insurance</p> <p>10 for the business?</p> <p>11 A. No. The insurance -- what happens within</p> <p>12 Omnicare, Inc. is they utilize a company called</p> <p>13 Marsh to handle all their insurance. So what they</p> <p>14 send out to us are questionnaires, various</p> <p>15 questions about different kinds of things that they</p> <p>16 want to know in order to determine coverage. We</p> <p>17 would prepare those annually.</p> <p>18 Q. Who would fill out the questionnaire on</p> <p>19 behalf of Pharmaceuticals?</p> <p>20 A. I would think the last time it was done</p> <p>21 was probably Jim McDevitt.</p> <p>22 Q. Do you know whether or not you carried</p> <p>23 flood insurance for 525 Virginia?</p> <p>24 A. Yes, we did receive proceeds.</p>
<p style="text-align: right;">43</p> <p>1 nature of what had gone in there over the past</p> <p>2 number of years, that it probably would not help us</p> <p>3 to do that unless we could demonstrate to our</p> <p>4 customers that something had changed the situation,</p> <p>5 that it wasn't prone to flooding in the future.</p> <p>6 Q. Well, you told me about a flood in the</p> <p>7 year 2001. Are you aware of -- what happened prior</p> <p>8 to 2001 that would cause the concern?</p> <p>9 A. It's my understanding that that general</p> <p>10 area, the office park or whatever you want to call</p> <p>11 that, that location was prone to flooding, and</p> <p>12 there had been floods there in '99, obviously the</p> <p>13 one in 2001, and I've been told that there was a</p> <p>14 third one that had taken place there at some</p> <p>15 point.</p> <p>16 Q. What do you know about the 1999 flood?</p> <p>17 A. It occurred. We generated some -- we loss</p> <p>18 -- we had some losses. I don't know what the</p> <p>19 details of them are.</p> <p>20 Q. The losses were the -- was the damage to</p> <p>21 the Delaware property that you told me about</p> <p>22 earlier?</p> <p>23 A. That's my understanding.</p> <p>24 Q. Do you know the building was located in a</p>	<p style="text-align: right;">45</p> <p>1 Q. So then you did have a flood insurance</p> <p>2 policy?</p> <p>3 A. Yes.</p> <p>4 Q. Did you know that you can't buy a flood</p> <p>5 insurance policy unless you're in a flood plane?</p> <p>6 A. I know that now, yes.</p> <p>7 Q. You didn't know that before?</p> <p>8 A. No.</p> <p>9 Q. Did anybody at the company know that the</p> <p>10 building was located in a flood plane prior to the</p> <p>11 2001 flood?</p> <p>12 A. I don't know.</p> <p>13 Q. Do you know what the insurance proceeds</p> <p>14 that were available to the company as a result of</p> <p>15 the flood?</p> <p>16 A. Yes.</p> <p>17 Q. How much?</p> <p>18 A. We had a one million dollar policy on 525,</p> <p>19 and a two and a half million dollar, I'm not sure</p> <p>20 what it's called, excess policy.</p> <p>21 Q. Anything else?</p> <p>22 A. The excess was for both 425 and 525.</p> <p>23 Q. Were there any other policies?</p> <p>24 A. There was a policy on 425, a million</p>

Exhibit G



KENNETH FELD

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 02-CV-2905

BARRY M. PORTNOY and GERARD )	DEPOSITION UPON
M. MARTIN, as Trustees for )	
HUB PROPERTIES TRUST, )	ORAL EXAMINATION
)	
Plaintiffs, )	OF
)	
)	
- vs - )	KENNETH FELD
)	
)	
OMNICARE PHARMACEUTICS, )	
INC. and OMNICARE CLINICAL )	
RESEARCH, INC., )	
)	
Defendants. )	

- - - - -

TRANSCRIPT OF DEPOSITION, taken by and  
before JENNIFER WEARNE, Professional Reporter  
and Notary Public, at the offices of OBERMAYER,  
REBMANN, MAXWELL & HIPPEL, LLP, One Penn Center,  
19th Floor, 1617 J.F. Kennedy Boulevard,  
Philadelphia, Pennsylvania, on Monday,  
March 3, 2003, commencing at 11:25 a.m.

REPORTING SERVICE ASSOCIATES (RSA)  
A VERITEXT COMPANY  
1845 Walnut Street - 15th Floor  
Philadelphia, Pennsylvania 19103  
(215) 241-1000

COPY

VERITEXT PA

KENNETH FELD

27

1 Chalfont, Pennsylvania.

2 BY MR. DIAMOND:

3 Q. Were you familiar with the fact that  
4 the Fort Washington Industrial Park was in a  
5 flood zone?

6 A. Yes.

7 Q. Would you say that that was common  
8 knowledge for all the people who were  
9 working at -- or the people that you worked with  
10 at Omnicare, that they all knew that it was in a  
11 flood zone?

12 A. Yes.

13 Q. How did you know it was in a flood  
14 zone?

15 A. I started working in that office park  
16 in 1983, and there were periods of rain that  
17 came through where intersections would flood.

18 Q. Was that when you were working for  
19 Ciba Geigy?

20 A. No, that's when I was working for  
21 Rorer Pharmaceuticals.

22 Q. They were in that park?

23 A. Yes, they were at that time.

24 Q. At that time? Were you an officer of

VERITEXT PA

KENNETH FELD

28

1 Omnicare Clinical at any time?

2 A. Not that I recall.

3 Q. Were you an officer of Omnicare  
4 Corporate at any time?

5 A. No.

6 Q. Did you ever discuss with anybody at  
7 Omnicare Clinical or Omnicare Corporate the fact  
8 that 525 and 425 were located in a flood zone?

9 A. Yes.

10 Q. Do you remember the earliest, if you  
11 can -- and I'll take you through some documents  
12 that may help you, but do you remember the  
13 earliest time that you first had such a  
14 discussion and with whom you had the discussion?

15 A. Yeah. As I recall, it was early in  
16 2001 January, February, March, we had some  
17 meetings with John Hamill and Dave Morra.

18 Q. Who was John Hamill?

19 A. John Hamill was the -- I believe  
20 John's title was either director or  
21 vice-president of finance for Omnicare Clinical  
22 Research.

23 Q. What was the discussion, as best as  
24 you can recall?

VERITEXT PA

KENNETH FELD

29

1 A. As best as we could recall -- as best  
2 as I can recall, the discussion primarily  
3 centered around issues related to insurance  
4 coverage.

5 Q. And what were those issues?

6 A. I had noticed and Jim McDevitt had  
7 noticed that in our P.&L.s, profit and loss  
8 statements, in early 2001, that the line for  
9 insurance had significantly dropped in terms of  
10 the premiums from prior years, and that raised  
11 flags in both of our minds as to what had  
12 changed with our coverage, insurance in general,  
13 property, liability, and anything else that  
14 would relate to insurance coverage.

15 Q. So you spoke to Mr. Hamill and  
16 Mr. Morra about it?

17 A. Spoke to both of them.

18 Q. Was this on the phone or at a meeting?

19 A. No, we had a meeting.

20 Q. Do you remember where?

21 A. In the Fort Washington offices at 525  
22 Virginia Drive.

23 Q. This was in early 2001?

24 A. Yes.

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1 Q. And you and Mr. McDevitt expressed  
2 your concern?

3 A. Yes, we did.

4 Q. And what were you told?

5 A. At that time we were told that it  
6 would be looked into and we would be provided  
7 with a response.

8 Q. Was the idea of flood insurance  
9 discussed at all at that meeting?

10 A. Only in its most general terms.

11 Q. What do you mean by that?

12 A. Well, again, our conversations at that  
13 meeting were very inclusive of insurance. We  
14 did raise the point in those discussions that,  
15 you know, the facilities, both facilities, were,  
16 indeed, in the Fort Washington flood plain, and  
17 Jim and I wanted to make sure that we had  
18 appropriate coverages regardless of what might  
19 occur, property loss, liability, you know, due  
20 to whatever cost.

21 Q. I'm sorry. If I interrupt you, I  
22 don't mean to. At that time in early 2001, at  
23 the time of that meeting, were you aware of any  
24 prior flooding of the 425 or 525 properties that

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1 might have occurred?

2 A. Yes.

3 Q. Could you tell me what you were aware  
4 of?

5 A. Tropical storm Floyd came through that  
6 area in the fall of '99, I believe it was, and  
7 during that storm there was, I was told, a foot,  
8 foot and a half of water within the 425 Delaware  
9 Road facility, and I was told that there was no  
10 water in the 525 Virginia Drive facility.

11 But the water did lap up to the front  
12 door, and I believe someone else had told me  
13 that it rose almost to the height of the loading  
14 dock in the back of the building.

15 MR. DIAMOND: Excuse me just  
16 a second.

17 (Discussion off the record.)

18 BY MR. DIAMOND:

19 Q. If Mr. Morra testified that he knew  
20 nothing about the flood plain, the property  
21 being in a flood plain, until after tropical  
22 storm Allison in June of 2001, as far as you're  
23 concerned, that would be untrue, wouldn't it?

24 MR. McELROY: Objection to

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1 the form of the question.

2 BY MR. DIAMOND:

3 Q. You can answer.

4 A. Yes, that would not be true.

5 Q. Because you told him?

6 A. Yes.

7 Q. Was he surprised when you told him?

8 Did he say I didn't know we were in a flood  
9 plain?

10 MR. McELROY: Objection.

11 BY MR. DIAMOND:

12 Q. You can answer.

13 A. From what I recall; he did not seem to  
14 be surprised.

15 MR. DIAMOND: Let's mark  
16 this Feld-4.

17 (Entry form marked for  
18 identification as Exhibit Feld-4.)

19 BY MR. DIAMOND:

20 Q. Take a look through those documents.  
21 I note for the record that none of these pages  
22 appears to have your name on them, and so you  
23 may be completely unfamiliar with them, but I  
24 just wanted to ask you about them.

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1 put into effect by the division.

2 Possibly, the division could have  
3 evaluated alternative risk management action  
4 plans, including the purchase of flood insurance  
5 implementing the recommendations of an insurance  
6 underwriter or a risk management consultant  
7 investigating the relocation of consigned  
8 inventory to a warehouse removed from flood  
9 zone, renegotiating the lease, modifying the  
10 facility, et cetera.

11 Was that a correct and accurate  
12 statement as far as you were concerned?

13 MR. McELROY: Objection to  
14 the form of the question.

15 BY MR. DIAMOND:

16 Q. You can answer.

17 A. As far as I was concerned, yes.

18 Q. So, in other words, if you had known  
19 the true state of affairs regarding the  
20 insurance, you could have taken action to try to  
21 mitigate or prevent possible flood damage to  
22 Omnicare Pharmaceuticals?

23 MR. McELROY: Objection to  
24 the form of the question.

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1 MR. PARRY: You can answer.

2 THE WITNESS: Yes, yes, we  
3 could have made alternate plans and  
4 tried to evaluate other options.

5 BY MR. DIAMOND:

6 Q. Do you see number three, it appears  
7 the umbrella liability coverage level,  
8 75 million in property insurance coverage level,  
9 50 million primary and 30 million flood and  
10 earthquake were sufficient in 1999 and 2000, but  
11 reduced to the 2.5-million-dollar level in 2001  
12 under a new policy.

13 Does that refresh your recollection  
14 about what you knew regarding any change in  
15 flood insurance that Pharmaceuticals had?

16 A. Yes, it does.

17 Q. Was this accurate, you originally had  
18 \$30 million, and it was reduced for 2000, 2001  
19 to \$2.5 million in flood insurance?

20 A. At this point I do not recall the  
21 specific numbers. I do recall there was a  
22 significant reduction as we moved into 2001, a  
23 significant reduction in the premiums that we  
24 were being charged.

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1 2.5 million?

2 A. I honestly don't recall.

3 Q. Okay. If you would have  
4 \$30 million -- if you had had the same flood  
5 insurance in 2000, December of 2000 to December  
6 of 2001 that you had had from December of 1999  
7 to December of 2000, the flood insurance had  
8 been the same, which was \$30 million, would that  
9 have covered all the damage that Pharmaceuticals  
10 sustained in tropical storm Allison?

11 MR. McELROY: Objection to  
12 the form of the question.

13 MR. PARRY: You can answer.

14 THE WITNESS: At the time  
15 when this was written, I believed it  
16 would have.

17 BY MR. DIAMOND:

18 Q. Have you changed your mind since then?

19 A. No, I haven't, but I'm not privy to  
20 certain information that relates to the actual  
21 costs of, if you will, closing the business up  
22 and how they accounted for all that.

23 Q. Well, as far as you understood, as  
24 long as you were present in Pharmaceuticals, if

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1 you had \$30 million in flood insurance coverage,  
2 would that have been sufficient to restore the  
3 business facilities to what they were before the  
4 flood and to pay whatever claims the company had  
5 to pay for damage caused by the flood?

6 A. I believe it would, yes.

7 Q. What do you think the total would have  
8 been? How much of that insurance money would  
9 you have had to spend to bring the business  
10 back, the physical facility back, and to pay for  
11 whatever damage to inventory or property had  
12 occurred?

13 MR. McELROY: Objection to  
14 the form of the question.

15 THE WITNESS: Recovering the  
16 facility and equipment to the way the  
17 business was just prior to the flood,  
18 \$10 million, \$8 to \$10, maybe as high  
19 as \$12 million. I don't recall what  
20 the payments to clients would have  
21 been.

22 BY MR. DIAMOND:

23 Q. You had testified previously that the  
24 \$10 million in consigned inventory was probably

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1 a little low?

2 A. That's what we believed, yes, that's  
3 what I believed.

4 Q. What did you think it was on  
5 June 25th, 2001 approximately?

6 MR. McELROY: Objection to  
7 the form of the question.

8 THE WITNESS: Well, on our  
9 review of what was in our warehouse  
10 was more on the order of \$18 to  
11 \$20 million.

12 BY MR. DIAMOND:

13 Q. Do you know, was all the consigned  
14 inventory damaged in the flood?

15 A. Physically damaged, I --

16 MR. PARRY: One moment.

17 MR. DIAMOND: All right.

18 (Discussion off the record.)

19 THE WITNESS: Could you  
20 repeat the question so I answer the  
21 right one?

22 BY MR. DIAMOND:

23 Q. Was all the consigned inventory at the  
24 525 facility, at the 525 and 425 facilities, was

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1 Q. Do you remember the name of the  
2 client?

3 A. Novartis Animal Health.

4 Q. Did they approach you with this  
5 proposal after hurricane Floyd?

6 A. I believe the original contact was  
7 prior, slightly prior to -- I'm sorry.  
8 Hurricane Floyd?

9 Q. I'm sorry. Tropical storm Allison?

10 A. I believe it was just prior to  
11 tropical storm Allison.

12 Q. And did they indicate whether they  
13 were or weren't interested in pursuing that  
14 particular endeavor after tropical storm  
15 Allison?

16 A. Oh, yes, they definitely continued to  
17 dialogue with us.

18 Q. They were interested?

19 A. They were very interested, yes.

20 MR. DIAMOND: Feld-12.

21 (Email dated 9/21/99 marked  
22 for identification as Exhibit  
23 Feld-12.)

24 (Discussion off the record.)

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## KENNETH FELD

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1 situation, some had said tell us when you're  
2 back up and running, we'll send you new  
3 material, we'll ask you to remake product.

4 Others said, you know, okay, it's  
5 destroyed, let's get the insurance squared away,  
6 and then we'll evaluate what we want to do next  
7 for those particular products. So there was a  
8 variety of things between the customer.

9 Q. Were you reporting these contacts with  
10 customers back to Clinical and Corporate, giving  
11 them an idea of what customers were saying?

12 A. Yes.

13 Q. Were you optimistic or pessimistic at  
14 the end of July 2001 that you could restore the  
15 revenue flow you had had before the flood?

16 A. I was optimistic that we could do it.

17 Q. Why?

18 A. We were booking revenue at the end of  
19 July, six weeks after the flood occurred. There  
20 was no place else to go but up.

21 Now, the time frame, you know, was  
22 discussed in terms of how quickly we could begin  
23 to book revenue at the level on a monthly basis  
24 prior to the flood.

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1 identification as Exhibit Feld-20.)

2 BY MR. DIAMOND:

3 Q. I'm just going to ask you about the  
4 top page, maybe the top two pages. So why don't  
5 you take a look at the top two pages, if you  
6 would, top three pages.

7 A. Okay.

8 Q. What does Exhibit-20 indicate was  
9 Omnicare's revenues for the second half of 2001?

10 MR. PARRY: You mean  
11 Pharmaceuticals?

12 MR. DIAMOND: Omnicare  
13 Pharmaceuticals, yes, right.

14 THE WITNESS: What does it  
15 indicate the revenues were?

16 BY MR. DIAMOND:

17 Q. Yeah.

18 A. Do you want me to add it all up?

19 Q. Well, does this comport with your  
20 recollection? As I read this, in July the  
21 revenues were \$195,000?

22 A. Yes.

23 Q. In August, \$364,000, which was more  
24 than what you projected? I think you projected

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1 325, I think it was? Is that what it was?

2 MR. PARRY: 310.

3 THE WITNESS: 310.

4 BY MR. DIAMOND:

5 Q. So you were over what you projected?

6 A. Uh-huh.

7 Q. They were 377,000 in September,  
8 511,000 in October, 615,000 in November, and  
9 404,000 in December?

10 A. (Witness nods head.)

11 Q. Where were you -- who was sending you  
12 business?

13 A. Several of our clients, many of our  
14 clients, people we've been doing business with,  
15 companies we've been doing business with prior  
16 to the flood.

17 Q. It's been suggested in this litigation  
18 that after the flood, very few of your clients  
19 wanted to continue to do business with you,  
20 certainly very few of your significant clients  
21 wanted to do business with you; is that an  
22 accurate statement?

23 A. No, it's not.

24 Q. Do you know if you were paying any

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1 rent at all during the second half of 2001?

2 A. My understanding, and what I was told,  
3 is no, we were not paying any rent on the 525  
4 Virginia Drive nor the 425 Delaware Drive  
5 facility.

6 Q. These activities that you resumed, how  
7 did you resume them? First of all, what was the  
8 level of cooperation you received from the  
9 landlord regarding restoration of the property  
10 and any other help you might need?

11 A. As I recall, in order to reestablish  
12 the business itself, we did not need any direct  
13 support from the landlord as we were bringing  
14 the business back. It was effectively all  
15 internal Omnicare needs and input to bring the  
16 business back.

17 Q. Did you speak to any other landlord  
18 representatives in the immediate aftermath of  
19 the flood, say, the first month?

20 A. Certainly, yes.

21 Q. Do you remember who you spoke to?

22 A. I remember Dave Campolli and there  
23 were other people from Dave's office who we  
24 would talk to periodically. The main contact

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1 A. Cichon.

2 Q. Were their offices on the first or  
3 second floor before the flood?

4 A. First floor.

5 Q. Now, as you look down this client  
6 list, the people that we just discussed who  
7 reported to Cichon and Downs, they were calling  
8 these clients? They were making contact with  
9 them?

10 A. They were making contact with these  
11 clients and probably several others that don't  
12 appear on this list, because they're probably  
13 lumped in the general statement at the bottom.

14 Q. And what were the Cichon, slash, Downs  
15 people, I'll call them that for shorthand  
16 purposes, what were they reporting to you about  
17 what client intentions were respecting sending  
18 any new business or continuing any business with  
19 Pharmaceuticals?

20 A. Most of them wanted to know what our  
21 recovery plan was. They wanted to know when we  
22 were going to be back up and operational and how  
23 and where, and they -- you know, they wanted to  
24 know that because they wanted us to do work for

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1 them.

2 Q. Was there -- and I think I've asked  
3 you this before. And if I have, forgive me.  
4 Was there any suggestion that clients were never  
5 going to send you work again because you had had  
6 two floods in two years?

7 A. Not that I ever heard directly. There  
8 may have been statements like that I heard  
9 second or third-hand from some of my staff that  
10 was on-site immediately after the flood when  
11 they were coming to pick up their material where  
12 some of the individuals who were sent it was  
13 reported to me indicated that if we reopen  
14 business here, they would most likely not do  
15 work with us. However, that was stated by  
16 individuals that were not decision-makers in  
17 their company at all.

18 Q. Were you aware of any statements by  
19 any decision-makers in those companies, your  
20 client companies, that they would not send any  
21 more work to the Fort Washington facility if it  
22 reopened?

23 A. I was not aware of any comments like  
24 that.

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1 A. No, I honestly don't.

2 Q. Why not?

3 A. Because I felt then, and I still feel  
4 today, that that business unit could have been  
5 brought back, could have been a larger --  
6 generating a larger revenue, generating larger  
7 profit, generating business unit that would have  
8 fed more business into the Clinical Research  
9 business unit.

10 Q. Mr. Campolli testified that  
11 Mr. McDevitt had said to him -- follow me here.  
12 I don't want Mr. McElroy to ask what the basis  
13 of my question is. That's why I'm going through  
14 this.

15 Mr. Campolli testified at his  
16 deposition that Mr. McDevitt had said to him --  
17 Mr. McDevitt had said to him that a lot of your  
18 customers wanted Pharmaceuticals to start back up  
19 at 525 because there wasn't any other facility  
20 in the area that they could send their work to.  
21 Does that sound accurate to you?

22 MR. McELROY: Objection.

23 BY MR. DIAMOND:

24 Q. Is that true?

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1 A. Yes.

2 Q. Barry Rostholder. Who is Steve Purdy?

3 A. Steve was one of our project managers.

4 Q. And you see where it says packaging  
5 operations, with the exception of Virbac, all  
6 packaging operations have been completed, no  
7 additional work is being accepted; was that your  
8 understanding, that no additional work was going  
9 to be accepted as of the time you left?

10 A. As of February '02, they had made a  
11 decision to close down the business unit. So  
12 from that point on, no new work was being  
13 accepted except the production schedule for  
14 Virbac.

15 They were just to close out anything  
16 that was going on. That was the plan up  
17 until -- that was the plan I knew of up until  
18 the time I left on March 31st.

19 Q. So you were turning customers away?

20 A. Again, up until March 31st, yes, we  
21 were not accepting any new work.

22 Q. And there was no work to accept?  
23 People wanted you to take on new work?

24 A. Yes.

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## KENNETH FELD

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1 tested.

2 And what this is indicating, I  
3 believe, is they wanted us to complete that  
4 testing and then work to transfer the remaining  
5 part of the study either back to them or to  
6 another laboratory.

7 Q. When were the customers of Omnicare  
8 Pharmaceuticals told that the business was going  
9 to be phased out?

10 A. We started doing that within a day or  
11 two after I learned of that decision.

12 Q. And did you convey any -- did you  
13 convey that information yourself to any of your  
14 customers?

15 A. I spoke to some customers about it.  
16 Some of our clients, after they learned of the  
17 decision, they called me directly and wanted to  
18 know more information, if I could share it with  
19 them.

20 Q. Did any of them express any  
21 disappointment?

22 A. Yes, many of them did.

23 Q. What kinds of things did they say?

24 A. We can't believe that's the decision,

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1 you know, you guys always did a great job for  
2 us, we were really hoping that you would be back  
3 up and running, you know, we don't know who  
4 we're going to use now.

5 Q. The other documents, I think I now  
6 understand what they are, these other documents  
7 that are part of this exhibit, are these all --  
8 if I can summarize them -- instructions from the  
9 client in what to do with the remaining work  
10 once they were informed that the company was  
11 going to be phased out?

12 A. Well, they're client contact reports  
13 in some cases, maybe in most, I'm sure it is, as  
14 you'd say, it was we have programs running, how  
15 do you want us to close down those programs, and  
16 it was their instructions as to how to go about  
17 doing that and what they wanted to do.

18 MR. DIAMOND: That's 28, I  
19 guess.

20 (Business plan marked for  
21 identification as Exhibit Feld-28.)

22 BY MR. DIAMOND:

23 Q. Do you recognize what's been marked  
24 Feld-28?

VERITEXT PA



Exhibit H

JAMES MCDEVITT

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 NO. 02-CV-2905  
4 BARRY M. PORTNOY and GERARD ) DEPOSITION UPON  
M. MARTIN, as Trustees for )  
5 HUB PROPERTIES TRUST ) ORAL EXAMINATION  
)  
6 - vs - ) OF  
)  
7 ONMICARE PHARMACEUTICS, INC. ) JAMES McDEVITT  
and OMNICARE CLINICAL )  
8 RESEARCH, INC. )  
-----

9  
10  
11 TRANSCRIPT OF DEPOSITION, taken  
12 by and before KRISTIN N. LAFTY, Professional  
13 Reporter and Notary Public, at the Law Offices  
14 of OBERMAYER, REBMAN, MAXWELL & HIPPEL, LLP,  
15 19th Floor, One Penn Center, 1617 JFK Boulevard,  
16 Philadelphia, PA, on Tuesday, April 22, 2003,  
17 commencing at 10:05 a.m.  
18  
19  
20 - - -  
21

22 REPORTING SERVICE ASSOCIATES (RSA)  
A Veritext Company  
23 1845 Walnut Street - 15th Floor  
Philadelphia, Pennsylvania 19103  
24 (215) 241-1000

## JAMES MCDEVITT

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1 Q. Never received any money at all?  
 2 A. No.  
 3 Q. Why not; do you know?  
 4 A. Well, I think it boiled down to  
 5 resources. Saint Paul is a much more -- is a  
 6 much more substantial company than Omnicare.  
 7 They have 40 billion dollars in assets. And  
 8 they probably felt that their offer was  
 9 bonafide. And they weren't about to be bullied  
 10 or hustled. So they just said, you know, take  
 11 it or leave it. And then when they find out  
 12 that we hired CAPS, they withdrew their offer.  
 13 They took it down to zero.  
 14 Q. Just so I'm clear, this is taking  
 15 place -- the cover page here, it says, received  
 16 Marsh, USA. It's addressed to someone named  
 17 Mark.  
 18 A. Mark Cantalamessa.  
 19 Q. CAPS is Marsh, right?  
 20 A. No. Mark Cantalamessa worked at Marsh  
 21 & McClennan, which is a large insurance broker.  
 22 Q. I see.  
 23 A. And CAPS is a small CPA consulting  
 24 firm that tries to expedite or increase

35

1 insurance claims.  
 2 Q. Gotcha. So you generated this  
 3 document, give or take, in August of 2000?  
 4 A. Yes.  
 5 Q. And so there's no doubt in your mind  
 6 that in August of 2000, Omnicare Clinical  
 7 Research knew that the Fort Washington  
 8 industrial park might be subject to flooding?  
 9 A. Well, yes. I mean, you know, the idea  
 10 of instructing people to go maximize an  
 11 insurance claim, one would think that they knew  
 12 there were floods.  
 13 Q. Well, they knew there was a flood,  
 14 didn't they?  
 15 A. Yes.  
 16 Q. You discussed the flood with  
 17 Mr. Froesel, didn't you?  
 18 A. No. I worked with John Hamill. And  
 19 John Hamill talked to Dave Froesel.  
 20 Q. What was Mr. Hamill's position?  
 21 A. He was the controller of Omnicare  
 22 Clinical Research.  
 23 Q. And you discussed the flood with  
 24 Mr. Hamill?

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1 A. Yes. And John said that I was to work  
 2 with this company appointed by Dave Froesel.  
 3 Q. Could you take a look at next to the  
 4 last page of this document? Do you see the  
 5 handwriting at the bottom of it?  
 6 MR. SHARE: Is that  
 7 0003549?  
 8 MR. DIAMOND: It is.  
 9 THE WITNESS: With the 525  
 10 building?  
 11 BY MR. DIAMOND:  
 12 Q. Yes. Where it says that. Do you see  
 13 that handwriting?  
 14 A. Yeah.  
 15 Q. Do you recognize whose handwriting it  
 16 is?  
 17 A. It's not mine. I think it's John  
 18 Colligan's.  
 19 Q. John Colligan's?  
 20 A. Colligan, C-O-L-L-I-G-A-N. He was my  
 21 predecessor. Yeah. There's his name at the  
 22 top.  
 23 Q. And it says, as I read it, 525.  
 24 building landlord has 500K, need minimum

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1 coverage of 6.6 million provided. We need  
 2 coverage on improvements and contents.  
 3 A. Yes.  
 4 Q. Biohazard cleanup, not going for  
 5 this. And then it has, lost signed contracts,  
 6 lost pending contracts, lost customers, et  
 7 cetera, downstream, impact on business  
 8 interruption claim.  
 9 A. Right.  
 10 Q. So as I read this, there are two  
 11 separate subjects being addressed in the  
 12 handwritten comments?  
 13 A. Right.  
 14 Q. One is the adequacy of insurance, the  
 15 other is the nature, the components of the  
 16 business interruption claim?  
 17 A. Right. The second part is the part  
 18 that I worked on, which was basically pulling  
 19 sales order reports, backlog reports, production  
 20 reports, order cancellations to figure out the  
 21 impact and the measurement of the business  
 22 interruption value. And what I basically  
 23 learned is, business interruption insurance is a  
 24 proxy for your payroll and contractual

## JAMES MCDEVITT

<p style="text-align: right;">50</p> <p>1 A. Yeah.</p> <p>2 Q. So that as I understand it, Exhibit-5,</p> <p>3 it says, "John, Janice Rice asked me to forward</p> <p>4 to you the attached federal flood application."</p> <p>5 Janice Rice from corporate is telling John</p> <p>6 Hamill, and, as you put it, is telling</p> <p>7 Mr. Colligan to fill out the federal flood</p> <p>8 insurance application because the buildings are</p> <p>9 in a flood zone?</p> <p>10 A. It's a federal requirement.</p> <p>11 Q. But because the buildings were in a</p> <p>12 flood zone?</p> <p>13 A. Yes, yes.</p> <p>14 Q. So when you say on page -- the second</p> <p>15 page of your memo, which is Omnicare 11058,</p> <p>16 finding one, "The federal flood insurance forms</p> <p>17 were completed and submitted in May of 2000,"</p> <p>18 you are talking about the Exhibit-6 document,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Number two, "No other risk</p> <p>22 management took place other than completing this</p> <p>23 flood insurance application form. Pharmaceuticals</p> <p>24 division managers were actively trained in</p>	<p style="text-align: right;">52</p> <p>1 inventory, 15 million dollars in invested</p> <p>2 capital. If we didn't get flooded, cleanup or</p> <p>3 remediation would cost 4 to 5 million dollars,</p> <p>4 and business interruption claims could have</p> <p>5 easily been 12 to 20 million dollars. So when</p> <p>6 you add all those numbers up, I asked for a 60</p> <p>7 to 75 million dollar insurance policy.</p> <p>8 Q. When did you do that?</p> <p>9 A. At the end of 2000. Susan Nelson and</p> <p>10 I completed forms that went to Janice Rice. And</p> <p>11 I asked her 60 to 70 million dollars in</p> <p>12 insurance. And apparently they thought it was</p> <p>13 an aberration. Now, our --</p> <p>14 Q. What was an aberration? Who is they?</p> <p>15 A. The 60 to 70 million dollar</p> <p>16 requirement.</p> <p>17 Q. And who thought it was an aberration?</p> <p>18 Corporate?</p> <p>19 A. Yes.</p> <p>20 MR. DIAMOND: Now, there's</p> <p>21 one other thing -- on the record,</p> <p>22 we've never been provided with those</p> <p>23 documents, Mr. Share. And we'd like</p> <p>24 them immediately.</p>
<p style="text-align: right;">51</p> <p>1 disaster recovery plans. If this flood zone</p> <p>2 information had been forwarded to Pharmaceuticals</p> <p>3 management, a flood loss mitigation plan along</p> <p>4 the lines of other disaster recovery plans could</p> <p>5 have been put into effect by the division.</p> <p>6 Possibly, the division could have evaluated</p> <p>7 alternative risk management action plans,</p> <p>8 including the purchase of flood insurance,</p> <p>9 implementing the recommendations of an insurance</p> <p>10 underwriter or risk management consultant,</p> <p>11 investigating the relocation of consigned</p> <p>12 inventory to a warehouse removed from the flood</p> <p>13 zone, renegotiating the lease, modifying the</p> <p>14 facility, et cetera."</p> <p>15 A. Right.</p> <p>16 Q. What were you criticizing here? That</p> <p>17 Pharmaceuticals wasn't told enough?</p> <p>18 A. Yeah. The information stayed within</p> <p>19 the finance organization.</p> <p>20 Q. You mean within corporate?</p> <p>21 A. Yes. Well, John Colligan left, and</p> <p>22 then I took his place. But we were a contract</p> <p>23 manufacturer. We had, let's say, 30 million</p> <p>24 dollars -- 20 to 30 million dollars of consigned</p>	<p style="text-align: right;">53</p> <p>1 MR. SHARE: That's the first</p> <p>2 I'm hearing of it.</p> <p>3 MR. DIAMOND: Okay. But</p> <p>4 it's not the first request you've</p> <p>5 gotten for everything related to</p> <p>6 insurance and floods and</p> <p>7 Mr. McDevitt. And we've never seen</p> <p>8 these documents. These are documents</p> <p>9 you provided to corporate?</p> <p>10 THE WITNESS: Right. It was</p> <p>11 a survey. Apparently -- and I didn't</p> <p>12 know this at the time -- they were in</p> <p>13 the midst of switching carriers. So</p> <p>14 we filled out Excel work papers. And</p> <p>15 we characterized our property, the</p> <p>16 square footage, its usage,</p> <p>17 manufacturing, admin, clerical,</p> <p>18 general office, utility. And also we</p> <p>19 had to characterize the assets in that</p> <p>20 building.</p> <p>21 And I did a quick</p> <p>22 calculation on business requirements,</p> <p>23 and I came up easily with 70 million</p> <p>24 dollars. But I also started asking</p>

## JAMES MCDEVITT

<p style="text-align: right;">66</p> <p>1 talking about in this memo?</p> <p>2 A. Yes.</p> <p>3 Q. If Pharmaceuticals had been told, here</p> <p>4 is what your insurance is down to, your flood</p> <p>5 insurance is down to, and you're in a flood zone</p> <p>6 -- well, you knew you were in a flood zone?</p> <p>7 A. Right.</p> <p>8 Q. What steps do you think Pharmaceuticals</p> <p>9 would have taken?</p> <p>10 MR. SHARE: Object to form.</p> <p>11 BY MR. DIAMOND:</p> <p>12 Q. You can answer.</p> <p>13 A. Well, what I would have done is -- and</p> <p>14 this goes back to -- I would have written a</p> <p>15 paper signed by all the managers of the division</p> <p>16 and escalated it through the chain of command</p> <p>17 and say we are at risk. We have potential</p> <p>18 liabilities here of untold millions. What do we</p> <p>19 do? And I would have come up with another</p> <p>20 background statement, another list of</p> <p>21 alternatives. I would have priced and cost them</p> <p>22 all.</p> <p>23 Q. Alternatives that you are describing</p> <p>24 in paragraph two?</p>	<p style="text-align: right;">68</p> <p>1 anything for this.</p> <p>2 Q. For flood?</p> <p>3 A. For a flood or, you know, for the</p> <p>4 plant location or the economic exposure.</p> <p>5 Q. So you are saying that corporate</p> <p>6 management -- corporate in Cincinnati</p> <p>7 underinsured you, didn't tell you about it and</p> <p>8 never developed any kind of plan for the flood</p> <p>9 that you weren't insured for?</p> <p>10 MR. SHARE: Object to form.</p> <p>11 BY MR. DIAMOND:</p> <p>12 Q. You can answer that.</p> <p>13 A. Well, let's put it this way. The</p> <p>14 information, that would have been a collective</p> <p>15 usefulness and benefit to the entire Omnicare</p> <p>16 company. In the back, you'll see that I say, it</p> <p>17 wasn't disseminated laterally or horizontally.</p> <p>18 So we all suffered. It would have been a</p> <p>19 collective solution. It wouldn't have just been</p> <p>20 Omnicare Pharmaceuticals solving their flood</p> <p>21 problem. It would have been to the benefit of</p> <p>22 Omnicare, its business reputation and its</p> <p>23 clients and its employees. You know, the old</p> <p>24 three-legged stool.</p>
<p style="text-align: right;">67</p> <p>1 A. Right. What do we do here? We're in</p> <p>2 a flood plane. We're doing drug trials. All</p> <p>3 our clients and projects which take five to ten</p> <p>4 years to complete are at risk. We have to fix</p> <p>5 the problem. And I would have worked with</p> <p>6 management and also worked with the landlord,</p> <p>7 which was an issue. We could have communicated</p> <p>8 with the landlord. What do we do to alter the</p> <p>9 building? It would have taken money and time.</p> <p>10 Q. Take a look at Exhibit-7, if you</p> <p>11 would.</p> <p>12 A. And the other thing is that --</p> <p>13 Q. I'm sorry.</p> <p>14 A. We did have disaster recovery plans</p> <p>15 for IT.</p> <p>16 Q. What's IT?</p> <p>17 A. Information technology department.</p> <p>18 Q. Right.</p> <p>19 A. All the companies have that now. You</p> <p>20 do computer backups, you do off-site storage of</p> <p>21 records and electronic files. What I was</p> <p>22 alluding to was, we had a formal IT disaster</p> <p>23 recovery plan, a book that was signed by all the</p> <p>24 division managers. Curiously, we didn't have</p>	<p style="text-align: right;">69</p> <p>1 Q. In his deposition of -- or his</p> <p>2 questions of Dr. Feld, Mr. Share got a little</p> <p>3 worked up over your use of the word "deliberate</p> <p>4 deceit."</p> <p>5 A. Yes. It's an alternative.</p> <p>6 Q. Why do you use those words, deliberate</p> <p>7 deceit?</p> <p>8 A. Well, you know, if you go back to</p> <p>9 ethics, if you withhold information or you give</p> <p>10 false information, that's called a lie or</p> <p>11 deceit. And the information -- what happened</p> <p>12 here is, as I said earlier, this information was</p> <p>13 either deliberately withheld, which is deceit,</p> <p>14 or the person was incompetent. They had all</p> <p>15 this information, all this data and all these</p> <p>16 facts, and they couldn't read it and digest it</p> <p>17 and find out it was imperil, which is</p> <p>18 incompetence. I go back to a controller or CFO,</p> <p>19 his job is to protect the company assets.</p> <p>20 Q. So you are saying this is a</p> <p>21 possibility?</p> <p>22 A. Yes. And it's my opinion, too.</p> <p>23 Q. Would you take a look at Exhibit-7,</p> <p>24 please, which is, as I read it, a package of</p>



## JAMES MCDEVITT

<p style="text-align: right;">166</p> <p>1 instructions -- there's an E-mail in between -18  2 and -19, I think, that I wrote. And I wrote to  3 Ron about those instructions that were on number  4 -18. And I said, more or less, they didn't  5 make sense. And then I wrote a letter to Ron,  6 you know, and Ken. And then Ken jumped in and  7 said, I see what Jim's confusion is. We will be  8 boxing ourselves into scenarios which are not  9 achievable.  10 (At this time, McDevitt-20  11 was marked for identification.)  12 BY MR. DIAMOND:  13 Q. I will show you some documents now,  14 Mr. McDevitt, that deal with the level of  15 business that Pharmaceuticals did after the June  16 2001 flood. You see Exhibit-20?  17 A. Yes.  18 Q. This appears to me to be an E-mail  19 from somebody named Steve Purdy to you, among  20 others.  21 A. Yes.  22 Q. Who is Steve Purdy?  23 A. He was a fellow employee who during  24 the final days of the business, he became the</p>	<p style="text-align: right;">168</p> <p>1 2001, January 2002. Because we didn't really  2 know whether we were going to close or reopen  3 the business. So the salespeople were still  4 selling.  5 Q. Clients were still coming to you?  6 A. Yes.  7 Q. When did you inform clients that no  8 additional work was being accepted?  9 A. Well, that was the -- that was part of  10 the closeout. We had to go to the clients in  11 January, February and tell them that's it no  12 more orders. And then what we did was, we  13 helped them identify competitors and reassign  14 their projects to companies, such as PCI, Fisher  15 Scientific.  16 Q. What was the reaction of the clients  17 when you told them you were closing?  18 MR. SHARE: Object to form.  19 BY MR. DIAMOND:  20 Q. You can answer.  21 A. There was disappointment. You know,  22 it was a type of a thing, we had excellent  23 relationships with our clients. And the  24 disappointment was on a personal level. And</p>
<p style="text-align: right;">167</p> <p>1 project management director. And basically the  2 management team that was left was myself, Chris  3 Cichon, Steve Purdy, Dave MacAllister and John  4 Morrison. And, you know, we realized the  5 business was going to be closed. So we used to  6 have -- we wanted to, you know, complete these  7 final acts and in a rather professional manner,  8 so we could have weekly meetings what was left  9 of the management team. This was something I  10 proposed.  11 And basically I just wanted  12 to have an orderly withdraw from the business.  13 And what you see here is a litany of tasks and  14 responsibilities regarding the closeout.  15 Q. Take a look at the paragraph, if you  16 would, that says, "Packaging Operations."  17 A. Uh-huh.  18 Q. "With the exception of Virbac, all  19 packaging operations have been completed. No  20 additional work is being accepted." Was  21 additional work being offered?  22 A. Oh, yeah. You know, in the transition  23 stage, we were selling and booking new orders, I  24 believe, until December or January, December</p>	<p style="text-align: right;">169</p> <p>1 then what happened was, it turned into a job  2 hunting type environment, where our clients  3 started trying to hire our employees, or  4 competitors started trying to hire our  5 employees. So, you know, the whole environment  6 and circumstances changed. But our clients were  7 disappointed.  8 (At this time, McDevitt-21  9 was marked for identification.)  10 BY MR. DIAMOND:  11 Q. Do you recognize this series of  12 E-mails?  13 A. Yes.  14 Q. Could you summarize it for us?  15 A. Okay. Susan Dorsey was our sales rep  16 in California. And we were -- she was  17 entertaining a business opportunity with Genome  18 Therapeutics. The potential client was looking  19 at our standard terms and conditions and was  20 trying to make some modifications. It was a  21 negotiating point. And basically she was asking  22 for staff assistance from myself, Ron Greenspan,  23 Albert McCormick to address the topic of an  24 insurance coverage on the consigned inventory.</p>



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 02-CV-2905

BARRY M. PORTNOY and GERARD ) DEPOSITION UPON  
M. MARTIN, as Trustees for ) ORAL EXAMINATION  
HUB PROPERTIES TRUST, ) OF  
Plaintiffs, ) STEVE PURDY  
- vs - )  
OMNICARE PHARMACEUTICS, INC. )  
and OMNICARE CLINICAL )  
RESEARCH, INC., )  
Defendants. )

13 - - - - -

15                   TRANSCRIPT OF DEPOSITION, taken by and  
16 before DEBRA R. WILHELM, Professional Reporter  
17 and Notary Public, at the law offices of  
18 OBERMAYER, REBMANN, MAXWELL & HIPPEL, LLP, 19th  
19 Floor, One Penn Center, 1617 JFK Boulevard,  
20 Philadelphia, Pennsylvania, on Wednesday,  
21 November 20, 2002, commencing at 10:15 a.m.

REPORTING SERVICE ASSOCIATES (RSA)  
A Veritext Company  
15th Floor - 1845 Walnut Street  
Philadelphia, Pennsylvania 19103  
(215) 241-1000

RSA Court Reporters

Steve Purdy

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1 took place in June of 2001?

2 A No, there was a flood in the 425  
3 building. It was Hurricane Floyd. I don't  
4 remember. It was the fall of 1999 or 2000.

5 Q April of 1999 was Hurricane Floyd?

6 MR. SHARE: September 16th.

7 To the extent that it's significant,  
8 hurricanes don't happen in April.

9 THE WITNESS: At that time,  
10 Hurricane Floyd flooded 425  
11 considerably and I believe a small  
12 amount of water entered 525.

13 BY MR. HABER:

14 Q When did you learn that 425 was  
15 flooded considerably by Hurricane Floyd?

16 A I believe it happened over a weekend.  
17 The storm itself was on Friday, so I would have  
18 learned on Monday upon my arrival to work.

19 Q Did you also --

20 MR. SHARE: Which one are  
21 you talking about now?

22 THE WITNESS: This is  
23 Hurricane Floyd I'm referring to.

24 BY MR. HABER:

Steve Purdy

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1 A At that time, no.

2 Q How about the damage in 425 during the  
3 September '99 flood, did that impact on your  
4 business?

5 A I believe that there was considerable  
6 damage in that building. It did not impact on  
7 my particular clients. My recollection is that  
8 there weren't any clients that I was project  
9 manager for that had any product or operations  
10 going on in 425.

11 Q So at the time, the clients for which  
12 you were responsible had their work being  
13 performed in the 525 facility?

14 A Yes.

15 Q Do you have any idea the impact that  
16 the flood damage in September of 1999 had on the  
17 business itself?

18 A - I couldn't quantify it in dollar  
19 figures if that's what you are asking. I do  
20 know there were clients affected and that there  
21 were possibly issues with continued business or  
22 issues with dealing with the aftermath.

23 Q Such as?

24 A Well, when you lose product, if you

Steve Purdy

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1 to do that, and when we were going to do that.

2 Q What's the business recovery plan?

3 A The plan itself?

4 Q What is a business recovery plan? You  
5 said you had one in your desk.

6 A It detailed what would be done in the  
7 event of a catastrophe, such as a fire, a  
8 flood. Honestly, I never read my copy.

9 Q Did everyone have a copy?

10 A I don't think everyone had a copy. I  
11 think the managers, directors and maybe a select  
12 few other people. I was given a copy by Jim  
13 Kessler, who was my manager at the time, because  
14 we were helping to put together what we would do  
15 from a project management standpoint. I was  
16 involved with him, so that's the reason I had a  
17 copy. My copy was at a level where it was wet  
18 at my\_desk. A lesson was learned.

19 Q Who authored the business recovery  
20 plan?

21 A I'm not sure who the author of that  
22 would be. It was every individual department  
23 had input, but it was for our division  
24 specifically, Omnicare Pharmaceuticals.

Steve Purdy

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1 this.

2 Q Can you describe what this material  
3 is?

4 A This material is a collection of  
5 client contact letters and forms that were  
6 accumulated after the decision to close the  
7 business. They were relating to contacting  
8 clients and the comments back from the clients.  
9 And also there's a letter that went out from Ken  
10 Feld to the individual clients detailing the  
11 closure and the possible transfer of work to  
12 Omnicare's Toledo facility.

13 Q For example, the page that's bait  
14 numbered Omnicare 168, which I believe is the  
15 fourth page in this package, is a letter  
16 addressed to Carmen Molina who you already told  
17 me about.

18 A Yes.

19 Q In March of 2002, what sort of work  
20 was Omnicare Pharmaceuticals performing for  
21 AstraZeneca?

22 A At this point, I believe everything  
23 that we were doing with them was analytical in  
24 nature. All manufacturing, packaging had been

Steve Purdy

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1 sent to another facility.

2 Q If you take a look at the last  
3 paragraph of the letter, maybe that will help  
4 you.

5 A (Witness complies.) Yes, that's  
6 analytical work.

7 Q So you were actually performing  
8 analytical work for AstraZeneca in March of  
9 2002. When the decision came to close the  
10 business, this work was turned away?

11 A This work was in the process of being  
12 transferred to other laboratories while we were  
13 doing it. So the answer to your question would  
14 be, yes, it was turned away. We probably just  
15 expedited the removal of that work from our  
16 facility to another facility.

17 They were in the process of  
18 transferring the analytical methods to another  
19 lab to move the work out. I think I mentioned  
20 earlier in my deposition that they were moving  
21 everything back to their Swedish facility and  
22 that was ongoing. So this was really just a  
23 boost to give them an official, we are closing,  
24 you need to expedite your efforts to move things





## CHRISTOPHER CICHON

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 02-CV-2905

BARRY M. PORTNOY and GERARD ) DEPOSITION UPON  
M. MARTIN, as Trustees for )  
HUB PROPERTIES TRUST ) ORAL EXAMINATION

- vs -

OF

OMNICARE PHARMACEUTICS, INC.) CHRISTOPHER CICHON  
and OMNICARE CLINICAL )  
RESEARCH, INC. )

TRANSCRIPT OF DEPOSITION, taken  
by and before KRISTIN N. LAFTY, Professional  
Reporter and Notary Public, at the Law Offices  
of OBERMAYER, REBMANN, MAXWELL & HIPPEL, LLP,  
19th Floor, One Penn Center, 1617 JFK Boulevard,  
Philadelphia, PA, on Monday, November 11, 2002,  
commencing at 10:25 a.m.

REPORTING SERVICE ASSOCIATES (RSA)

A Veritext Company

1845 Walnut Street - 15th Floor  
Philadelphia, Pennsylvania 19103

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## CHRISTOPHER CICHON

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1 Q. And for how long were they  
2 interrupted?  
3 A. Oh, I don't recall the entire period  
4 of how long.  
5 Q. Was it more than a day?  
6 A. Oh, certainly. Certainly it was more  
7 than months, because of the amount of clean up.  
8 I mean, the building had to be renovated as a  
9 result.  
10 Q. The 425 building?  
11 A. Yes.  
12 Q. So it was months of renovations,  
13 repairs?  
14 A. I would say at least cleanup and  
15 renovations were in the months. I couldn't tell  
16 you the total time period.  
17 Q. Sticking with the 425 building -- do  
18 you want to take a break?  
19 MR. SHARE: I could use two  
20 minutes.  
21 (A brief recess was taken at  
22 this time.)  
23 BY MR. CHING:  
24 Q. We were talking about the 1999 flood

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1 and the damage that occurred as a result of the  
2 1999 flood at both the 525 Delaware Avenue  
3 facility and the 525 Virginia Drive facility.  
4 And you had mentioned that the damage at the 425  
5 facility was quite extensive?  
6 A. Yes.  
7 Q. Was there any concern that the company  
8 had as a result of the damage suffered in 1999  
9 at the 425 building?  
10 A. I'm not sure what you mean.  
11 Q. Was there any concern that there would  
12 be -- that another flood would occur at the 425  
13 building?  
14 A. I don't know the general consensus  
15 within the organization as to what -- who  
16 thought there was another flood possibility or  
17 not. I don't remember it ever being discussed.  
18 I was probably not privileged to any  
19 conversations in that regard.  
20 Q. Let me start back. Thank you for  
21 that. Did you have any discussions within the  
22 company about the flood risk and flood damage  
23 after the 425 1999 flood damage?  
24 A. I remember talking about the damage.

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1 I don't remember ever discussing risk to the --  
2 Q. How about the damage, the flood  
3 damage?  
4 A. I'm sure we discussed it, what  
5 happened in that building and the repercussions  
6 with clients and that sort of thing. Go ahead.  
7 Q. And who would you have that discussion  
8 with?  
9 A. I believe we had it with project  
10 management, within the project management team.  
11 Q. And who were the individuals you had  
12 those discussions with? Again, just to give  
13 you -- this is the 1999 flood?  
14 A. Yes. Steve Purdy, myself, the  
15 director, Jim Kessler. I don't recall if -- I  
16 don't recall if Jim Bannister was in that role  
17 at the time or not.  
18 Q. Who was Jim Bannister?  
19 A. He was another project coordinator,  
20 but he may have been subsequent to that.  
21 Q. How about --  
22 A. I'm trying to remember the time frame.  
23 Q. Dr. Feld, did you have any discussions  
24 with Dr. Feld?

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1 A. No, I don't recall having any  
2 discussions with Dr. Feld regarding that.  
3 Q. And what was discussed with these  
4 individuals?  
5 A. Well, I guess discussing client  
6 issues, who was affected.  
7 Q. Client issues means who was affected?  
8 A. Well, who was affected. I'm trying to  
9 remember what clients of mine were indirectly  
10 affected. I don't recall anybody being directly  
11 affected. But we did do manufacturing for one  
12 of my clients in that building. But I can't  
13 remember if we had completed that exercise prior  
14 to then or not.  
15 Q. Do you remember who that client was?  
16 This is 1999.  
17 A. 1999, we had -- Kanke was the company  
18 that I dealt with.  
19 Q. And this was manufacturing, Chris?  
20 A. Yes, primarily. Formulation  
21 development manufacturing for that client.  
22 MR. SHARE: What's the  
23 spelling?  
24 THE WITNESS: K-A-N-K-E.

## CHRISTOPHER CICHON

<p style="text-align: right;">114</p> <p>1 Q. On pallets?</p> <p>2 A. On pallets.</p> <p>3 Q. Was there any concern that flood</p> <p>4 damage would contaminate the products on the</p> <p>5 floor or at the lower levels?</p> <p>6 A. No, not that I'm aware of.</p> <p>7 Q. Why was that?</p> <p>8 A. Like I said earlier, we didn't -- we</p> <p>9 didn't think -- or I didn't think that there was</p> <p>10 a potential for a flood in the 525 facility.</p> <p>11 Q. And the same is true for the 425</p> <p>12 building after the flood, the 1999 flood?</p> <p>13 A. No. I assumed the concern was more</p> <p>14 for the 425 facility. That's why materials were</p> <p>15 basically not stored in the 425 facility. They</p> <p>16 were only storing materials they were using for</p> <p>17 a particular project at that time.</p> <p>18 Q. Okay. After the 1999 flood, you were</p> <p>19 still involved with operations at the 425</p> <p>20 building, right?</p> <p>21 A. Yes.</p> <p>22 Q. But you are not -- you don't know</p> <p>23 if -- if product was stored at a higher level at</p> <p>24 the 425 building after the 1999 flood?</p>	<p style="text-align: right;">116</p> <p>1 know of by the FDA under, you know, the GMP</p> <p>2 regulations that we've been talking about that</p> <p>3 relate to facilities in the flood plane or flood</p> <p>4 zone?</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. You don't know of any requirements by</p> <p>7 the FDA or from the FDA that require drugs to be</p> <p>8 stored at a higher level than a flood plane?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. Are you aware of any other -- are you</p> <p>11 aware of any regulations by any other government</p> <p>12 agency that require drugs to be stored at a</p> <p>13 higher level in the flood plane zone?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. Would you think that it would be --</p> <p>16 that it would be one of your responsibilities to</p> <p>17 know if there were such requirements?</p> <p>18 MR. SHARE: Objection. I</p> <p>19 don't think that's technically a</p> <p>20 proper question. You can answer it,</p> <p>21 if you can.</p> <p>22 THE WITNESS: It might be</p> <p>23 the organization's responsibility.</p> <p>24 Because if you are governed by that</p>
<p style="text-align: right;">115</p> <p>1 A. I don't recall going into the</p> <p>2 warehousing room in 425 after that and recall</p> <p>3 whether it was stored up above, on the floor.</p> <p>4 Q. There would be no occasion for you to</p> <p>5 go into the warehousing section?</p> <p>6 A. Not many, no, no. Being in project</p> <p>7 management, no.</p> <p>8 Q. Is there any documentation at the</p> <p>9 company that would indicate how things were</p> <p>10 stored and whether they were on pallets on the</p> <p>11 floor or at a certain height?</p> <p>12 A. In the 425 facility?</p> <p>13 Q. Anywhere.</p> <p>14 A. There's certainly documentation in the</p> <p>15 525 facility of locations of where items were</p> <p>16 stored.</p> <p>17 Q. And just to make clear, at the 525</p> <p>18 building?</p> <p>19 A. Yes.</p> <p>20 Q. After the 1999 flood, there were no</p> <p>21 special precautions taken to store product at a</p> <p>22 higher height?</p> <p>23 A. Correct.</p> <p>24 Q. Are there any requirements that you</p>	<p style="text-align: right;">117</p> <p>1 regulation, you should be aware of</p> <p>2 that regulation. So --</p> <p>3 BY MR. CHING:</p> <p>4 Q. But weren't you a member of the</p> <p>5 quality assurance program department?</p> <p>6 A. Yes. At one time, yes.</p> <p>7 Q. And at one point. So you didn't think</p> <p>8 that it was incumbent upon you to know all the</p> <p>9 relevant regulations?</p> <p>10 MR. SHARE: Objection to</p> <p>11 form.</p> <p>12 BY MR. CHING:</p> <p>13 Q. That had to deal with the safety of</p> <p>14 the product?</p> <p>15 MR. SHARE: Object to form.</p> <p>16 BY MR. CHING:</p> <p>17 Q. You can answer.</p> <p>18 A. That's a tough question to answer. In</p> <p>19 one regard, yes, I should be aware of the</p> <p>20 regulations that govern the products. But</p> <p>21 there's no way I could know every regulation</p> <p>22 myself.</p> <p>23 Q. Being that you have worked in the Fort</p> <p>24 Washington area for like 12, 13 years, probably</p>

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1 to them?  
 2 A. Concerned.  
 3 Q. Concerned?  
 4 A. Our clients had product and studies  
 5 ongoing that could have been impacted.  
 6 Q. Was there any reaction -- did any  
 7 clients react sort of like that E-mail that we  
 8 had -- that we had saw before, how could this  
 9 happen? How could a GMP facility be flooded?  
 10 A. No. More of the reaction was, we  
 11 understand. It was a major catastrophe. We  
 12 will basically want to know the status of our  
 13 materials. And, you know, what can we do, one,  
 14 to help us; and, two, you know, to -- I can't  
 15 think of the word.  
 16 Q. Did any of the clients express a  
 17 dissatisfaction about not being told that the  
 18 525 facility was in a flood plane?  
 19 A. Not to my knowledge.  
 20 Q. Let's go back to this exhibit.  
 21 A. Okay.  
 22 Q. If we look at -- let me just ask you  
 23 another general question. The clients that you  
 24 spoke to, did any of them indicate to you that

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1 if OPI continued to do operations at 525, that  
 2 they would refuse to do business with OPI?  
 3 A. I had clients that showed concern.  
 4 They were definitely concerned about continuing  
 5 business operations in that facility.  
 6 Q. But did they indicate to you that they  
 7 would absolutely refuse to continue their  
 8 contract with OPI?  
 9 A. That was not the statement. What they  
 10 said is that they had concerns or reservations  
 11 about continuing to do business in that  
 12 facility, in the 525 facility.  
 13 Q. Okay. Can you tell me -- can you  
 14 identify those clients for me?  
 15 A. Tularik.  
 16 Q. Any others?  
 17 A. I know BioMedicines had concerns.  
 18 Q. BioMedicines?  
 19 A. Yeah, BioMedicines.  
 20 Q. Is that one word?  
 21 A. Yes.  
 22 Q. Any other clients?  
 23 A. Not that I recall.  
 24 Q. So it was just BioMedicines and

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1 Tularik?  
 2 A. Tularik.  
 3 Q. They expressed a concern to you, but  
 4 they didn't state categorically that they would  
 5 not return to 525?  
 6 A. Correct.  
 7 Q. Who else contacted the clients at OPI  
 8 beside yourself?  
 9 A. Steve Purdy, Jim Bannister, the sales  
 10 department, and then even some of the directors  
 11 were in on the calls depending on the client.  
 12 Q. When would a director be involved in a  
 13 call?  
 14 A. It depended on the client and how much  
 15 involvement they had with that client. Many of  
 16 our clients, the director was, you know, always  
 17 involved due to either the volume of the  
 18 business or the relationship that might have  
 19 been formed with that director. So he or she  
 20 may have been in direct contact.  
 21 Q. Whose client -- whose responsibility  
 22 was it to contact AstraZeneca?  
 23 A. That would have been Steve Purdy. And  
 24 I'm trying to think of the business -- it's

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1 probably on the sheet. Business development  
 2 person, I believe, would be Bob Braden.  
 3 Q. And were you involved or participate  
 4 in any discussion with AstraZeneca with those  
 5 individuals?  
 6 A. No, I was not.  
 7 Q. How about same question for Durect?  
 8 A. No.  
 9 Q. And same question for Novartis Animal  
 10 Health?  
 11 A. No.  
 12 Q. Sanofi?  
 13 A. No.  
 14 Q. Are you aware of any other customer,  
 15 whether they are -- it was your responsibility  
 16 or not, that refused to do business at 525 after  
 17 the flood?  
 18 A. Bristol Myers Squibb, I do recall as  
 19 being one of those clients.  
 20 Q. Could you explain?  
 21 A. Just from --  
 22 Q. Was that your client?  
 23 A. No, it was not. It was Steve Purdy's  
 24 client.

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<p style="text-align: right;">162</p> <p>1 Q. Are you aware of any documentation 2 where -- Bristol -- 3 A. Meyers Squibb. 4 Q. -- Meyers Squibb indicated that they 5 would refuse to do business if operations 6 resumed at 525? 7 A. No, I am not aware of any 8 documentation. 9 Q. Well, how did you come -- how did you 10 come to know that? 11 A. Just from conversations with Steve. 12 Q. Now, going back to this exhibit, 13 Chris. If we went down the list of customers 14 that this document indicates that you were 15 assigned to, for example, like on page 9886, 16 Omnicare 9886, you talked about BioMed, right? 17 Was that BioMedicine? 18 A. I don't see a page number, but I see 19 BioMedicines. 20 Q. I mean the Bates stamp numbers. It 21 says Omnicare 9886. 22 A. It's not on my copy. 23 Q. In the middle of the page. 24 MR. SHARE: Right in the</p>	<p style="text-align: right;">164</p> <p>1 Q. And did you contact him after the 2 flood? 3 A. Yes, I did. 4 Q. It mentions that this client was 5 assigned to both you and an individual named 6 Aggostini? 7 A. Aggostinelli. 8 Q. Sorry. But was it you who contacted 9 the client? 10 A. I initiated the call, yes. 11 Q. During this discussion with your 12 client, did the client indicate that they would 13 refuse to come back? 14 A. No, they did not. 15 Q. Going down the list, Chris, I think 16 the next one I see with your name is Ganes, 17 G-A-N-E-S? 18 A. Yes. 19 Q. Do you see where I am? 20 A. Yes, I do. 21 Q. And the contact is Susan Yates, 22 Y-A-T-E-S? 23 A. Yes. 24 Q. Did you make the contact there?</p>
<p style="text-align: right;">163</p> <p>1 middle. I'm sorry. 2 THE WITNESS: Okay. Sorry. 3 BY MR. CHING: 4 Q. I got confused. 5 A. 86, yes. 6 Q. BioMed, right. We talked about 7 BioMed? 8 A. BioMed is BioMedicines. 9 Q. BioMedicines, right. And it mentions 10 a person named Hana Burger? 11 A. Yes. 12 Q. Did you speak to her after the flood? 13 A. Yes, I did. 14 Q. And did she indicate to you that she 15 would refuse to do business with OPI? 16 A. No. 17 Q. How about Blue Ridge -- Blue Ridge -- 18 I can't read the reference to the contact 19 there. It looks like Jody? 20 A. Jody. 21 Q. Jody. Do you know her last name? 22 A. It's him. Lockhart. 23 Q. Lockhart? 24 A. Lockhart, L-O-C-K-H-A-R-T.</p>	<p style="text-align: right;">165</p> <p>1 A. Yes, I believe I did. 2 Q. And the same question. Did the client 3 indicate that they would refuse to come back and 4 do work? 5 A. I don't remember if I talked to her on 6 the initial contact. I might have left a voice 7 mail. I don't recall whether anything was 8 stated whether they would still do business with 9 us. 10 Q. Fair enough. If you would turn to the 11 next page. 12 A. Okay. 13 Q. And go down to client whose initials 14 are RWJ PRI. Do you see where I am? 15 A. Yes. 16 Q. What does that stand for? 17 A. That's RW Johnson. 18 Q. What's PRI; do you know? 19 A. Pharmaceutical Research Institute. 20 Q. And it lists various contacts 21 including Angela Falzone, Maxine Berman and 22 Maria Grista, G-R-I-S-T-A? 23 A. Yes. 24 Q. Did you make the contact there?</p>

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<p style="text-align: right;">166</p> <p>1 A. I believe I contacted both Angela and  2 Maxine. Maria I did not contact.  3 Q. And during those discussions, did they  4 indicate that they would refuse to come back to  5 the 525 building?  6 A. I do not believe so. I don't know if  7 it was ever discussed. But they did discontinue  8 operations after the flood.  9 Q. Going down to -- I don't know if it's  10 Taiho, TALHO or T-A-I-H-O?  11 A. T-A-I-H-O, yeah. Taiho.  12 Q. Taiho. And the contact is Don Clodey,  13 C-L-O-D-E-Y?  14 A. Yes.  15 Q. Did you make the contact there, Chris?  16 A. I believe I did.  17 Q. And the same question. Did this  18 person indicate that they refused to do work at  19 525?  20 A. No.  21 Q. All right. Tularik. I guess that's  22 what we talked about before?  23 A. Yes.  24 Q. Contact is Bert Ho. Do you see where</p>	<p style="text-align: right;">168</p> <p>1 gentlemen. They are at two different locations.  2 Q. And during that conversation, did they  3 indicate that they would refuse to continue to  4 do work with OPI?  5 A. No, they did not.  6 Q. Going down the list to -- it looks  7 like a client called A-P-O-T-E-X, Apotex?  8 A. Apotex, yes.  9 Q. And the contact is Linda Biava,  10 B-I-A-V-A?  11 A. Yes.  12 Q. Did you contact -- did you reach this  13 woman?  14 A. I don't recall if I reached her  15 specifically. But I either left her a voice  16 mail or did speak to her. I don't recall which  17 it was.  18 Q. Did you receive any indication from  19 her or anyone else at the company that they  20 would refuse to do -- continue to do work with  21 OPI?  22 A. No, I did not.  23 Q. Okay. Let's go to the next page,  24 which is Omnicare 9888.</p>
<p style="text-align: right;">167</p> <p>1 I am?  2 A. Yes.  3 Q. And the question is, did Mr. Ho  4 indicate that he would refuse or the company  5 would refuse to continue work with OPI if they  6 remained at 525?  7 A. He did not state that, but he is the  8 one that said he had concerns about going back  9 into that facility.  10 Q. Virbac. I think you mentioned that?  11 A. Yes.  12 Q. Going down the list. And the contact,  13 Michael Elder, E-L-D-E-R, and Lou Demorka,  14 D-E-M-O-R-K-A?  15 A. That's incorrect. It's Del'Orco.  16 Q. Del'Orco?  17 A. D-E-L apostrophe Orco.  18 Q. Did you reach one of them?  19 A. Yes, I did.  20 Q. And who did you reach? Which one of  21 them did you reach?  22 A. I know I spoke to Lou. I can't  23 remember on the initial contact whether I spoke  24 to Mike. I believe I did speak to both</p>	<p style="text-align: right;">169</p> <p>1 A. Okay.  2 Q. Client is Emisphere,  3 E-M-I-S-P-H-E-R-E. There's no contacts there.  4 Did you contact someone?  5 A. Yes, I did. I can't remember if it  6 was Elso. I can't remember the quality  7 assurance gentleman's name. But I did contact  8 them.  9 Q. And was there any indication from that  10 contact or anyone else at the company that they  11 would refuse to continue to do work with OPI?  12 A. No, there was not.  13 Q. Going down the list, a company called  14 HMS. Again, there's no contact on that side.  15 Do you see where I am?  16 A. Yes.  17 Q. Did you reach someone at that company?  18 A. Yes, I did.  19 Q. Do you remember who?  20 A. David Terni was the president. He was  21 contacted. And then there was -- King was her  22 last name. Rene King, maybe. And then there  23 was another gentleman.  24 Q. Did any of those individuals or any</p>



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1 other representative from that company indicate  
 2 that they would refuse to continue to do work  
 3 with OPI if they remained at 525?  
 4 A. They may have. They were very upset  
 5 about the whole situation. I don't recall if  
 6 they stated they would never come back or not.  
 7 Q. You are not sure?  
 8 A. But I'm not sure. I'm not sure.  
 9 Q. Wouldn't you recall if one of your  
 10 clients said that they wouldn't -- would never  
 11 come back? You don't recall?  
 12 A. I don't recall.  
 13 Q. Going down the list to -- it looks  
 14 like the last one on this chart, Searle,  
 15 S-E-A-R-L-E?  
 16 A. Yes.  
 17 Q. I can't read the handwriting for the  
 18 contact. Do you have some understanding of who  
 19 the contact was at that company?  
 20 A. I believe that's Val.  
 21 Q. Val?  
 22 A. Val would have been -- Vanpril is the  
 23 drug and Placebo.  
 24 Q. So this individual and the product

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1 started out, I don't believe we had a written  
 2 procedure. But to start to keep track, we  
 3 started to write down on a form who you  
 4 contacted.  
 5 Q. There was a form made?  
 6 A. I believe.  
 7 MR. SHARE: Let him finish  
 8 the question before you answer it,  
 9 even if you know what the question is.  
 10 THE WITNESS: Okay.  
 11 BY MR. CHING:  
 12 Q. And so that once the form was made,  
 13 you would record what was discussed with a  
 14 client in the normal course of that business?  
 15 A. I don't know if it was everything that  
 16 was discussed. It was more of did you contact a  
 17 client and when.  
 18 Q. Did you --  
 19 A. It was more a record that we contacted  
 20 that client.  
 21 Q. Did it indicate what the client said  
 22 to you?  
 23 A. I don't recall if that was part of the  
 24 form or if that was written.

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1 there?  
 2 A. Yeah. No. I think they are all  
 3 products. The V-O-L might be volume, Placebo  
 4 and Valvarton. They are all drugs.  
 5 Q. Do you recall reaching someone at that  
 6 company?  
 7 A. Yes. Valerie Kidwell.  
 8 Q. And did she indicate or anyone else at  
 9 the company indicate that they would refuse to  
 10 continue to do business with OPI?  
 11 A. No.  
 12 Q. Other than these clients, do you  
 13 recall any other client who you contacted who  
 14 indicated to OPI that they refused to continue  
 15 to do business at 525?  
 16 A. No.  
 17 Q. When you contacted someone, a client,  
 18 did you make any written record of that  
 19 communication?  
 20 A. I believe I did, yes.  
 21 Q. Was there a protocol or procedure that  
 22 the company -- that OPI established for  
 23 recording --  
 24 A. Eventually there was. When we first

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1 Q. We'll get back to that in a minute. I  
 2 want to show you some -- what I think are some  
 3 of these reports. Okay?  
 4 A. Okay.  
 5 Q. But just some general questions  
 6 first. After the flood, the June 2001 flood,  
 7 are you aware of the company at OPI doing any  
 8 analysis on whether operations at 525 could be  
 9 restarted?  
 10 A. I'm not sure what you mean.  
 11 Q. At some point, there was a decision to  
 12 discontinue operations at 525, correct?  
 13 A. That was the decision to close the  
 14 facility?  
 15 Q. Right.  
 16 A. In February.  
 17 Q. Right. Was there any analysis or  
 18 study done to -- upon which that decision was  
 19 based?  
 20 A. I believe there were business plans  
 21 written to restart the business elsewhere.  
 22 Q. But was that -- were those studies --  
 23 was that analysis based purely on business  
 24 reasons? I guess let me try to rephrase this.



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1 and packaging. So the initial start-up of the  
 2 525 facility was analytically driven.  
 3 Q. Okay. Well, let's break it down  
 4 then.  
 5 A. Okay.  
 6 Q. In terms of analytical services, which  
 7 of the clients continued to have analytical  
 8 services performed at the 525 facility after the  
 9 June 2001 flood?  
 10 A. Virbac was one. Tularik was another.  
 11 These are my clients now. I'm trying to think  
 12 of the -- BioMedicines. These would all be  
 13 clients that had stability ongoing that we had  
 14 to continue.  
 15 Q. Okay. Now, forgive me. We talked  
 16 about analytical and we talked about stability.  
 17 Are they synonymous?  
 18 A. They are related. Stability is the  
 19 storage of a study of drug at a certain  
 20 condition.  
 21 Q. Analytical services -- let's break  
 22 this down.  
 23 A. Okay.  
 24 Q. Forgive me, Chris.

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1 for Virbac.  
 2 Q. Primary packaging?  
 3 A. Yes.  
 4 Q. For Virbac?  
 5 A. And secondary packaging for Virbac.  
 6 Q. And that was on the first floor?  
 7 A. Correct.  
 8 Q. Any other type services that OPI was  
 9 conducting for Virbac after the flood?  
 10 A. Analytical services.  
 11 Q. Analytical. But analytical was on the  
 12 second floor?  
 13 A. Yes.  
 14 Q. Any other services on the first floor?  
 15 A. The storage of stability.  
 16 Q. Let me just get this right, Chris.  
 17 Primary packaging, secondary packaging and  
 18 stability storage?  
 19 A. All on the first floor.  
 20 Q. On the first floor. And this all  
 21 occurred after the June 2001 flood?  
 22 A. Yes.  
 23 Q. And this was for Virbac?  
 24 A. Yes.

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1 A. It's all right.  
 2 Q. Analytical occurred on the second  
 3 floor at 525?  
 4 A. Correct.  
 5 Q. Stability occurred on which floor?  
 6 A. On the first floor.  
 7 Q. On the first floor?  
 8 A. The storage was the first floor.  
 9 Q. So at some point after the June 2001  
 10 flood, operations were being done for clients on  
 11 the first floor?  
 12 A. Only in the capacity of stability  
 13 storage. The stability units themselves  
 14 continued to run throughout the flood. It was  
 15 the only part of the building that continued to  
 16 run on backup generator.  
 17 Q. What other activities on the first  
 18 floor at 525 were conducted for clients after  
 19 the June 2001 flood?  
 20 A. In what time frame are we speaking?  
 21 Q. From the date of the flood, you know,  
 22 until present.  
 23 A. Okay. After we renovated the piece of  
 24 the building, we started to do primary packaging

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1 Q. Any other services for Virbac?  
 2 A. For Virbac?  
 3 Q. Yes. Same time frame, after the June  
 4 2001 flood.  
 5 A. I don't believe so.  
 6 Q. Any other services on the second floor  
 7 for Virbac besides analytical?  
 8 A. No.  
 9 Q. During this time, did OPI receive  
 10 revenues for the services that they provided to  
 11 Virbac?  
 12 A. Yes.  
 13 Q. Do you have any -- do you know how  
 14 much?  
 15 A. Not offhand, no.  
 16 Q. Do you have an impression whether it  
 17 was significant?  
 18 A. I don't know what you mean by  
 19 significant.  
 20 Q. Fair enough. How about clients other  
 21 than Virbac? And, again, we're talking about  
 22 services after the June 2001 flood at the 525  
 23 facility.  
 24 A. Emisphere.

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<p style="text-align: right;">182</p> <p>1 Q. Emisphere. And what type of services 2 did OPI provide to Emisphere after the flood? 3 A. That was secondary packaging in the 4 laboratory. 5 Q. Secondary packaging in a laboratory? 6 A. It was a process where you had to dip 7 biles, and it had to be in a hood. So it had to 8 be done in a laboratory, in a hooded ventilated 9 area. 10 Q. And this occurred at the 525 building? 11 A. On the second floor. 12 Q. On the second floor? 13 A. On the second floor. That's the only 14 place that -- 15 Q. Any other clients? 16 A. Not that I recall. 17 Q. You talked about Tularik? 18 A. Yes. 19 Q. What kind of services did OPI provide 20 to Tularik after the June 2001 flood? 21 A. In 525? 22 Q. Yes. 23 A. Stability storage and analytical 24 testing.</p>	<p style="text-align: right;">184</p> <p>1 A. No. 2 Q. I think you mentioned BioMedicines, 3 too? 4 A. Yes. 5 Q. What type of services did OPI provide 6 to BioMedicines after the June 2001 flood at 7 525? 8 A. Similar to -- 9 Q. Tularik? 10 A. Tularik. Stability storage and 11 analytical testing. 12 Q. So stability storage also took place 13 on the first floor? 14 A. Yes. 15 Q. And analytical testing on the second 16 floor? 17 A. Correct. 18 Q. Were there any other services that 19 were provided to BioMedicines? 20 A. Not at the 525 facility, no. 21 Q. Any other clients that you recall? 22 A. There's probably a few other clients 23 that we did stability testing for that we 24 continue to do stability testing for.</p>
<p style="text-align: right;">183</p> <p>1 Q. And this was after the June 2001 2 flood? 3 A. These were continuations of what was 4 in the facility prior to and after the flood. 5 Q. I'm sorry. Stability storage? 6 A. Right. 7 Q. And what else? 8 A. It was prior to -- these were ongoing 9 studies that were in the stability chambers at 10 the time of the flood. And then we continued to 11 do the testing on those storage. 12 Q. You mentioned stability storage and 13 something else? 14 A. Testing. 15 Q. Testing? 16 A. Analytical testing. 17 Q. And which floors did that -- stability 18 storage occurred on the first floor of 525? 19 A. Correct. 20 Q. And analytical testing occurred on the 21 second floor? 22 A. Correct. 23 Q. Any other services provided to Tularik 24 at 525?</p>	<p style="text-align: right;">185</p> <p>1 Q. Okay. Now, these were only -- you are 2 only talking about the clients that were 3 assigned to you? 4 A. Correct. 5 Q. There were other clients assigned to 6 other members of your project management team? 7 A. Correct. 8 Q. You don't know whether those clients 9 continue to do -- continue to have services 10 provided for them at the 525 building? 11 A. Not specifically, no. 12 Q. Who would know that information? 13 A. The project managers would have some 14 idea as to what continued in operation and what 15 didn't. 16 Q. Now, we mentioned Steve Purdy. Was 17 Steve Purdy one of those project managers? 18 A. Yes. 19 Q. Who else besides Steve Purdy? 20 A. Jim Bannister. 21 Q. Jim Bannister. Who else beside Jim 22 Bannister and Steve Purdy? 23 A. John Morrison. 24 Q. John Morrison. These are all project</p>

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<p style="text-align: right;">186</p> <p>1 managers?</p> <p>2 A. Yes.</p> <p>3 Q. John Morrison. Anyone else?</p> <p>4 A. The directors may have some knowledge</p> <p>5 at the time, but that would probably be about</p> <p>6 it.</p> <p>7 Q. By directors, you are talking about</p> <p>8 Dr. Feld?</p> <p>9 A. I don't know if Dr. Feld would know</p> <p>10 specifically what was or was not being conducted</p> <p>11 by a client. More the analytical -- the</p> <p>12 directors, the assistant directors of analytical</p> <p>13 would know what was continuing to develop.</p> <p>14 Q. Can you identify those?</p> <p>15 A. That would be David Aggostinelli.</p> <p>16 Q. Anyone else?</p> <p>17 A. And Larry Pachla.</p> <p>18 Q. And these two individuals would know</p> <p>19 whether other clients had work done for them at</p> <p>20 the 525 building after --</p> <p>21 A. They would know analytically what was</p> <p>22 done, yes.</p> <p>23 Q. Now, you talk about, they would know</p> <p>24 analytically. Are you talking about analytical</p>	<p style="text-align: right;">188</p> <p>1 A. No. Well, that's -- I'm thinking</p> <p>2 clinically. You are correct. Virbac was done,</p> <p>3 and then also Emisphere would be considered</p> <p>4 secondary packaging.</p> <p>5 Q. And obviously with respect to each of</p> <p>6 these clients that continue to have work done</p> <p>7 for them at the 525 building after the June 2001</p> <p>8 flood, OPI generated revenues from these</p> <p>9 clients?</p> <p>10 A. Yes.</p> <p>11 Q. These clients that we talked about,</p> <p>12 did they have any concerns either like from a</p> <p>13 bio contaminant point of view about resuming</p> <p>14 services at 525 after the flood?</p> <p>15 A. I would assume that they did. But we</p> <p>16 did testing to show that there was no airborne</p> <p>17 contamination in the facility.</p> <p>18 Q. So they elected to continue to -- they</p> <p>19 made a decision to continue services at 525?</p> <p>20 A. Yes.</p> <p>21 Q. Did OPI take any precautions after the</p> <p>22 June 2001 flood regarding these clients that</p> <p>23 resumed operations at 525 to make sure that they</p> <p>24 wouldn't be damaged by another flood?</p>
<p style="text-align: right;">187</p> <p>1 services?</p> <p>2 A. Services, correct.</p> <p>3 Q. What about other types of services</p> <p>4 besides analytical? Would different individuals</p> <p>5 know about those type of services after the</p> <p>6 flood at the 525 building?</p> <p>7 A. Yeah. The directors would possibly</p> <p>8 know what was done and not done.</p> <p>9 Q. Okay. Let's talk about primary</p> <p>10 packaging. Who would that be?</p> <p>11 A. Fred Restaino. That would be the</p> <p>12 director of packaging.</p> <p>13 Q. Anyone else?</p> <p>14 A. Manufacturing, Alan Wood.</p> <p>15 Q. Would that also include secondary</p> <p>16 packaging?</p> <p>17 A. Fred would be primary and secondary.</p> <p>18 Secondary would not have been conducted in 525.</p> <p>19 That was why the King of Prussia site was</p> <p>20 brought on to do secondary packaging.</p> <p>21 Q. So there was no secondary packaging</p> <p>22 done at 525 after the June 2001 flood?</p> <p>23 A. To my knowledge, no.</p> <p>24 Q. I thought you said Virbac?</p>	<p style="text-align: right;">189</p> <p>1 A. I guess the only precaution that was</p> <p>2 undertaken was to store things in the King of</p> <p>3 Prussia facility as much as possible. So all</p> <p>4 your inventory items were stored in King of</p> <p>5 Prussia and not in the 525 facility.</p> <p>6 Q. Okay. Generally when did these --</p> <p>7 when did the resumption of services at 525 take</p> <p>8 place, over what time period?</p> <p>9 A. Of all services, some services --</p> <p>10 Q. With these clients that continued to</p> <p>11 do business, the ones we just talked about.</p> <p>12 A. Well, analytically from the</p> <p>13 documentation you see that some of it resumed in</p> <p>14 the July, August time frame. The --</p> <p>15 Q. When did they end?</p> <p>16 A. When did the --</p> <p>17 Q. Did these services at some point -- at</p> <p>18 some point, the 525 facility was shut down,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. So services at 525 were terminated?</p> <p>22 A. Yes.</p> <p>23 Q. For example, let's talk about Virbac.</p> <p>24 When was the last services provided to Virbac at</p>



## DIFFERENCE IN CONDITIONS COVERAGE SUMMARY

The St Paul

This Summary shows the limits and extent of  
your Difference in Conditions Protection.

Property Covered		Valuation
<input checked="" type="checkbox"/> Real property		
<input checked="" type="checkbox"/> Business Personal Property		
<input checked="" type="checkbox"/> Business Income		
Additional Perils Covered	<input checked="" type="checkbox"/> Earthquake	<input checked="" type="checkbox"/> Flood
		Deductibles
Limit Of Coverage (Excluding Flood and Earthquake)	\$	\$
Flood Limit	\$ 5,000,000	\$ 25,000
Earthquake Limit	\$ 5,000,000	\$ 25,000
Catastrophe Limit	\$	

## Locations Insured

001	FOUR VALLEY SQUARE, BLUE BELL PA 19422
002	425 DELAWARE DRIVE, FORT WASHINGTON PA 19034
003	525 VIRGINIA DRIVE, FORT WASHINGTON PA 19034

CONFIDENTIAL

MAR 0001150

Name of Insured  
IBAH, INC.

Policy Number TE02900924

Effective Date 04/23/97

Processing Date 05/13/97 12:53 001

Exhibit L

RECYCLED

Ace Reporting Services (513)241-3200 / (800)277-7165

1 if there's any information that I would request with  
2 respect to the risk management area, the typical operating  
3 mode is I pick up the phone and I call Janice Rice.

4 BY MR. HABER:

5 Q. Jumping ahead then to the flood of June 2001,  
6 are you aware that you were underinsured for the losses  
7 suffered?

8 MR. WILKINSON: Object to the form.

9 A. I'm not sure I understand the question.

10 BY MR. HABER:

11 Q. Did you have enough insurance to cover your  
12 losses as a result of the June 2001 flood?

13 MR. WILKINSON: "Cover" meaning pay for?

14 MR. HABER: Yes.

15 A. I was aware of a flood in June of 2001, and at  
16 that time I was not aware of whether we were underinsured,  
17 adequately insured, or overinsured.

18 BY MR. HABER:

19 Q. My question is directed towards the time period  
20 after the flood.

21 A. I'm sorry?

22 Q. My question wasn't directed to what you knew at  
23 the time of the flood, it was directed to the facts after  
24 the flood. Are you aware that you had insufficient



1 insurance to pay all of the losses you suffered as a result  
2 of the flood?

3 MR. WILKINSON: Are you today aware, I think he  
4 is asking.

5 MR. HABER: Yes.

6 MR. WILKINSON: Okay.

7 A. Today I am aware of the fact that the insurance  
8 coverage provided was insufficient or less than the damages  
9 that were incurred.

10 BY MR. HABER:

11 Q. Was that a matter of concern to you?

12 MR. WILKINSON: Today, again?

13 BY MR. HABER:

14 Q. When you learned it?

15 A. I'm not sure what you mean by "concern."

16 Q. Well, do you care that you were underinsured?

17 A. Yes.

18 Q. Were you surprised when you learned that you  
19 were underinsured?

20 A. Yes.

21 Q. Do you typically, as a business strategy,  
22 intend to make sure that you have sufficient insurance  
23 coverage to cover all conceivable losses?

24 A. Typically, as I indicated earlier, we at

1 as opposed to move it elsewhere?

2 A. If we had received adequate insurance proceeds  
3 from Marsh, then we most likely would have continued to  
4 stay in the business.

5 (Plaintiffs' Exhibit 13 was marked for  
6 identification.)

7 BY MR. HABER:

8 Q. Before you look at the new document I just  
9 marked, if you had received adequate insurance proceeds  
10 from Marsh, that would have made it less expensive for the  
11 company to restart your operations, and, therefore, make it  
12 a more worthwhile investment; is that correct?

13 A. What I was saying is if Marsh had provided  
14 Omnicare with the correct recommendation in terms of the  
15 amount of insurance that the CRO or Omnicare should have  
16 had in place with respect to that business, then the  
17 decision would have been a lot easier for Omnicare to  
18 continue the business. Without the adequate insurance  
19 funding, it became a very difficult decision, from a  
20 financial perspective, to justify. The insurance proceeds  
21 were critical to the decision process in terms of whether  
22 to restart the business or not.

23 Q. Without the insurance proceeds, Omnicare would  
24 have had to obtain or contribute its own funds to start the

1 business up again?

2 A. Yes.

3 Q. Which would have reduced the financial  
4 attractiveness of such an investment?

5 A. Yes.

6 Q. Is that right?

7 A. Yes.

8 Q. Let's look at the next exhibit. Froesel 13 is  
9 a February 22nd, 2002 memo to Joel Gemunder from David  
10 Morra, upon which you are copied, regarding "Pharmaceutics  
11 transition." Do you recall receiving this interoffice  
12 memo?

13 A. No.

14 Q. The memo reads, "The following actions were  
15 taken this week: Informed Ken Feld on Thursday of the  
16 decision to move operations to Toledo.

17 "Ken Feld met with employees on Friday to  
18 inform them of the decision." And it goes on. What was  
19 moved to Toledo?

20 A. The only thing I recall is at about the time of  
21 the flood, or shortly thereafter, sometime, I believe, in  
22 2001, the Pharmaceutics business either had or was working  
23 on some sort of contract with an animal health-care  
24 company, I think called Virbac, and we were working on an

Exhibit M

JAMES MCDEVITT

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 02-CV-2905

BARRY M. PORTNOY AND GERARD ) DEPOSITION UPON  
M. MARTIN, as Trustees for )  
HUB PROPERTIES TRUST, ) ORAL EXAMINATION  
)  
Plaintiffs, ) OF  
)  
- vs - ) JAMES MCDEVITT  
)  
OMNICARE PHARMACEUTICS, INC., )  
and OMNICARE CLINICAL )  
RESEARCH, INC., )  
)  
Defendants. )

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TRANSCRIPT OF DEPOSITION, taken by and  
before ELISABETTA L. MAADDI, Professional Reporter and  
Notary Public, at the offices of OBERMAYER, REBMANN,  
MAXWELL & HIPPEL, LLP, 19th Floor, One Penn Center,  
1617 John F. Kennedy Boulevard, Philadelphia,  
Pennsylvania, on Tuesday, May 6, 2003, commencing at  
10:10 a.m.

REPORTING SERVICE ASSOCIATES (RSA)  
A VERITEXT COMPANY  
1845 Walnut Street - 15th Floor  
Philadelphia, Pennsylvania 19103  
(215) 241-1000

## JAMES MCDEVITT

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1 identify any of the clients who said, "I will double  
2 your business," if you --  
3 A. No.  
4 Q. If you remember?  
5 A. No. There were clients who admired our  
6 heroics. That was the way to describe it.  
7 Q. Dr. Feld testified that the amount of money  
8 that would have been required to get 525 back up and  
9 running was something north of 10 million dollars. You  
10 testified last time that that figure was about six  
11 million dollars.  
12 A. Yes.  
13 Q. Can you explain the discrepancy?  
14 A. Yes. If we were to have -- just refit the  
15 building and put machinery in with base level  
16 operations, we would have needed capital of three to  
17 four million dollars. If we were to have completed  
18 that build out, the 1.9 million on the RCA, the number  
19 goes up to six million, and this is the 525 building.  
20 The 12 to 13 million dollars was evacuating 525 and  
21 swapping properties within the HUB Real Estate  
22 portfolio, so it meant a new building.  
23 Q. Last time you were shown a document that had  
24 financial performance from June to December of '01, six

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1 and sales orders. We would have budgeted by client and  
2 by territory sales orders and techniques and just came  
3 up with an estimate by client, and then just -- we  
4 assume we'd lose half of our business the first year.  
5 Q. You also last time talked about additional  
6 business that was being offered post-flood --  
7 A. Right.  
8 Q. -- and prior to the decision to terminate the  
9 business. Can you characterize what type of work that  
10 was that was being offered?  
11 A. Is this the Nevardis agreement?  
12 Q. Well, in general.  
13 A. Nevardis was our -- let's put it this way. Our  
14 core business was clinical manufacturing, packaging,  
15 distribution, and analytical services. Those are drugs  
16 manufactured for use in clinical trial. That's it. We  
17 had many large pharmaceutical firms approaching us.  
18 They wanted to outsource manufacturing for,  
19 let's say, less critical products that had attained FDA  
20 approval. And that's a common event right now in the  
21 market where a lot of your large pharmaceutical  
22 companies, all they want to do is drug discovery and R  
23 and D and marketing.  
24 Manufacturing they will outsource on all these

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1 months after the flood.  
2 A. Yes, five months.  
3 Q. And the August number, you said, exceeded the  
4 revenue projection for August?  
5 A. Right.  
6 Q. Do you remember that?  
7 A. Yes.  
8 Q. Was that revenue projection a pre-flood  
9 projection or a post-flood projection?  
10 A. Post-flood. We were on track for record  
11 revenues, record profits, record sales orders. We were  
12 having a banner year in 2001 prior to the flood.  
13 Problem was we got flooded; the whole nature of our  
14 business changed. So, as I mentioned, it jerry-rigged  
15 an operation.  
16 Q. You said a moment ago that you and Dr. Feld had  
17 worked up some projections and you calculated erosion  
18 of clients.  
19 A. Yes.  
20 Q. Actually, erosion was the word you used last  
21 time. How did you do that specific calculation? What  
22 was the process?  
23 A. Well, at the time, we tabulated or surveyed the  
24 sales reps. The driver on it was the remaining backlog

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1 products. Or if a product is at the end of its  
2 lifeline, we had calls for an Italian company to do  
3 some manufacturing. So that was the business Ken was  
4 alluding to that he would live to have approached.  
5 Q. You talked last time about a study that David  
6 Campoli told you the landlord was doing --  
7 A. Yes.  
8 Q. -- engineering study for the building. When  
9 did he tell you that?  
10 A. I would say that was in April or May of 2002.  
11 Q. That's when you first learned?  
12 A. Well, we had two studies going on. The  
13 engineer -- when you talk about the water table study,  
14 let's say, the impact of the construction on the flood  
15 plain, that's when I first learned of that study.  
16 There was a previous study going on where they were  
17 doing building modifications, you know. There were  
18 actually two studies going on.  
19 Q. Let me ask you about both of those.  
20 A. Yes.  
21 Q. What are you referring to when you say water  
22 table studies?  
23 A. The army core of engineering study.  
24 Q. Okay.

## JAMES MCDEVITT

<p style="text-align: right;">106</p> <p>1 sales order analysis.</p> <p>2 Q. What did you mean by service area definition?</p> <p>3 These are all the things you were going to -- you</p> <p>4 anticipated the company, that is to say Omnicare</p> <p>5 Pharmaceuticals, performing?</p> <p>6 A. Yes. This is Ken's description of the actual</p> <p>7 pharmaceutical services and the products we were</p> <p>8 manufacturing.</p> <p>9 Q. So on page -- it looks to me to be ten, the</p> <p>10 tenth page of the presentation, it says options</p> <p>11 considered. You say, Manufacturing, stands alone; as</p> <p>12 defined, not viable --</p> <p>13 A. Right.</p> <p>14 Q. -- because it's tightly aligned with packaging</p> <p>15 distribution. This is the synergy you were talking</p> <p>16 about?</p> <p>17 A. Yes. You would be manufacturing with the</p> <p>18 finishing department, and finishing means packaging and</p> <p>19 distribution, so it wouldn't be a very lucrative</p> <p>20 option.</p> <p>21 Q. Taking a look at the -- what is the 13th page.</p> <p>22 It says Financial Analysis Packaging Distribution.</p> <p>23 There appear to be handwritten notes on it.</p> <p>24 A. Yeah.</p>	<p style="text-align: right;">108</p> <p>1 what I was asking were for was 5.3 million dollars</p> <p>2 including the two million dollar build out to go back</p> <p>3 into 525.</p> <p>4 Q. What is IRR, by the way?</p> <p>5 A. Internal rate of return.</p> <p>6 Q. And what would the total payback have been,</p> <p>7 that's \$4,350,000?</p> <p>8 A. Yes. Yes.</p> <p>9 Q. Over a 4.7 year period?</p> <p>10 A. No. You would have gotten your capital back in</p> <p>11 4.7 years.</p> <p>12 Q. I see.</p> <p>13 A. And you would have generated wealth of 4.4</p> <p>14 million dollars. Now, these projections are very</p> <p>15 aggressive. I've always told George that your IRR or</p> <p>16 your pay back -- your IRR would go to infinity,</p> <p>17 because, theoretically, there should be no capital</p> <p>18 invested on this provided you had insurance for your</p> <p>19 fixed assets at least on improvement replacement. So</p> <p>20 we conducted this analysis as if this was a new company</p> <p>21 start-up, and it made the analysis more in favor.</p> <p>22 Q. It would have been better than this?</p> <p>23 A. Yeah. The IRR would have gone to infinity, and</p> <p>24 then that, you know -- because it would have been no</p>
<p style="text-align: right;">107</p> <p>1 Q. Whose are they?</p> <p>2 A. Those are mine. I was verifying that this</p> <p>3 presentation tied into my Excel work papers.</p> <p>4 Q. I see. And then two pages later, it's McDevitt</p> <p>5 page 43, I see -- was that the same thing, your notes</p> <p>6 that tie into your Excel work papers?</p> <p>7 A. Yes, with the check -- yeah, the check mark</p> <p>8 means that. The one at the bottom, that's Ken's</p> <p>9 handwriting. --</p> <p>10 Q. What were you doing here, comparing new</p> <p>11 locations to 525 Virginia Drive?</p> <p>12 A. Right.</p> <p>13 Q. What were you doing?</p> <p>14 A. We were looking at a building swap with the</p> <p>15 landlord. That's what we were trying to -- that's what</p> <p>16 the new location is. And what you see is we could go</p> <p>17 into a new building for \$12,222,000, and achieve</p> <p>18 revenue and operating income figures as shown, 13.8</p> <p>19 million dollars and 3.7 million dollars. Then you</p> <p>20 would show the payback period of 4.5 with an IRR of 25</p> <p>21 percent, and the net present value, which is the</p> <p>22 discounted value of the wealth, close to 14 million</p> <p>23 dollars.</p> <p>24 And then the other one is the 525 building, and</p>	<p style="text-align: right;">109</p> <p>1 cause capital investment.</p> <p>2 Q. Next page. First, it says -- what does it say?</p> <p>3 Something excellent Dave, excellent Mike, or something</p> <p>4 excellent Mike, Gary? I can't read it.</p> <p>5 A. Dave -- Ron -- now, I did not do this. This</p> <p>6 was Ron Greenspan's analysis. Prior to this</p> <p>7 presentation, that was the only -- those were the only</p> <p>8 options we considered, then Ron independently put</p> <p>9 together an exit strategy. So these are Ron's numbers.</p> <p>10 Q. Whose handwriting is that on top?</p> <p>11 A. Ken's.</p> <p>12 Q. What does it say?</p> <p>13 A. Dave, excellent slide.</p> <p>14 Q. Who is Dave? Morra?</p> <p>15 A. Morra.</p> <p>16 Q. So it was Ron Greenspan who said inadequate</p> <p>17 flooding insurance coverage has complicated and delayed</p> <p>18 decisions regarding building and equipment restoration?</p> <p>19 A. Yes.</p> <p>20 Q. And that was a true statement?</p> <p>21 A. Yes.</p> <p>22 Q. He also said seven months post-flood clients</p> <p>23 are increasingly reluctant to commit new projects</p> <p>24 without a clear understanding of Omnicare's long-term</p>

## JAMES MCDEVITT

<p style="text-align: right;">110</p> <p>1 intentions?</p> <p>2 A. Correct.</p> <p>3 Q. And that was a true statement?</p> <p>4 A. Yeah. That was the jerry-rigged operation. We</p> <p>5 had a third party manufacturer, which we were</p> <p>6 subcontracted to. We had some packaging and</p> <p>7 distribution on the fourth floor of 630 Allendale Road</p> <p>8 site and some limited production in the 525 building,</p> <p>9 and we had analytical services in the 525 building, so</p> <p>10 our operations were scattered all over the Delaware</p> <p>11 Valley.</p> <p>12 Q. This suggests to me that clients were prepared</p> <p>13 to commit if they did have a clear understanding of</p> <p>14 Omnicare's long-term intentions?</p> <p>15 MR. SHARE: Object to form.</p> <p>16 BY MR. DIAMOND:</p> <p>17 Q. Is that correct?</p> <p>18 MR. SHARE: Object to form.</p> <p>19 BY MR. DIAMOND:</p> <p>20 Q. You can answer.</p> <p>21 A. Yes. It was getting to the point we had to get</p> <p>22 off the dime. The clients' projects were very</p> <p>23 important to them, and we had to come up with a</p> <p>24 decision, close the building or --</p>	<p style="text-align: right;">112</p> <p>1 A. Yes.</p> <p>2 Q. What is this?</p> <p>3 A. This is out of my copybook.</p> <p>4 Q. This is out of those logbooks --</p> <p>5 A. Right.</p> <p>6 Q. -- that you referred to?</p> <p>7 What is it?</p> <p>8 A. Well, that was a good day per John Hamill, do</p> <p>9 not -- this was witnessed by Ken Feld and Mark</p> <p>10 Cantalamessa --</p> <p>11 Q. Whoa. Whoa. Whoa. I'm sorry to interrupt</p> <p>12 you, but what is -- this is -- these were</p> <p>13 contemporaneous notes you kept --</p> <p>14 A. Yes.</p> <p>15 Q. -- on that day?</p> <p>16 A. Yes.</p> <p>17 Q. And it says, Sue Duff, and then what does it</p> <p>18 say?</p> <p>19 A. Sue Duff was -- apparently, I called Sue Duff</p> <p>20 about dental insurance.</p> <p>21 Q. I see.</p> <p>22 A. And then I had to call AstraZenica. I sent</p> <p>23 them an e-mail.</p> <p>24 Q. Right.</p>
<p style="text-align: right;">111</p> <p>1 Q. I understand. But just --</p> <p>2 A. Yes.</p> <p>3 Q. Again, this suggests to me that had Omnicare</p> <p>4 made the long-term commitment, the clients were there?</p> <p>5 A. Yes, they were.</p> <p>6 Q. What is the last page?</p> <p>7 A. That is Ron's estimate of closing the</p> <p>8 building -- closing the business.</p> <p>9 Q. What it would cost?</p> <p>10 A. Yes.</p> <p>11 Q. And the insurance recovery is 4.5 million</p> <p>12 dollars?</p> <p>13 A. Yes. And I think you have to add those two</p> <p>14 columns together, the 13.3 million and 1.9 million.</p> <p>15 Q. Was this presentation made, this power point</p> <p>16 presentation, ever made? Do you know?</p> <p>17 A. No, I don't know. I think it was e-mailed to</p> <p>18 Joel Germunder and Dave Froesel, and at that point</p> <p>19 there may have been phone calls, but I wasn't part of</p> <p>20 this communication.</p> <p>21 Q. Okay. Let's take a look at the next page,</p> <p>22 which unfortunately does not have any kind of marking.</p> <p>23 It appears to be a handwritten document that says</p> <p>24 2/28/01, Thursday. Is this your handwriting?</p>	<p style="text-align: right;">113</p> <p>1 A. Probably about the product contamination.</p> <p>2 Q. Yeah.</p> <p>3 A. Then I did a February/March revenue or P and L</p> <p>4 forecast by department.</p> <p>5 Q. Right.</p> <p>6 A. And then I worked on the business interruption</p> <p>7 claim analysis for the Hurricane Floyd.</p> <p>8 Q. Then you have arrows here to AstraZenica file,</p> <p>9 to Ken Feld, to Eric, to Jim McDevitt.</p> <p>10 A. Right.</p> <p>11 Q. What was that?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. Then payroll adjustment, Karen Gregory,</p> <p>14 remove three-day accrual?</p> <p>15 A. Right.</p> <p>16 Q. Was that something to do with your own --</p> <p>17 A. This was accounting gymnastics dictated by</p> <p>18 corporate.</p> <p>19 Q. And what is the next word?</p> <p>20 A. Wire.</p> <p>21 Q. No idea?</p> <p>22 A. Well, we did accounts receivable collections,</p> <p>23 and I used to wire the funds from our bank account to</p> <p>24 corporate.</p>



*Post, Exhibit A-11*

## Options Considered

### Exit

- ◆ Post-flood business was established as a temporary measure.
- ◆ Inadequate flood insurance coverage has complicated and delayed decisions regarding building and equipment restoration.
- ◆ Seven months post-flood, clients are increasingly reluctant to commit new projects without a clear understanding of Omnicare's long term intentions.
- ◆ Unabated employee attrition is negatively impacting the ability to support projects as well as employee morale.
- ◆ An exit strategy must be well planned and executed over 3-4 months in order to smoothly transition customers to other suppliers.



**Omnicare**  
Clinical Research

Exhibit N



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Portnoy vs. Omnicare Pharmaceuticals, Inc. -

Depo of: JEFF MOORE

Page 1 to Page 62

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CONDENSED TRANSCRIPT AND CONCORDANCE  
PREPARED BY:

RUSSELL COURT REPORTING INC.  
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Phone: 336-961-6057

## Portnoy vs. Omnicare Pharmaceuticals, Inc. -

Depo of: JEFF MOORE

BSA

XMAX(7/7)

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- (1) could have taken the risk for a short period of time maybe,  
 (2) but we didn't want to then deal with moving the equipment.  
 (3) Q. Did you ever communicate that opinion to anyone at  
 (4) Omnicare?  
 (5) A. Yes.  
 (6) Q. To whom?  
 (7) A. At least to Steve Purdy and I believe William Scultheis  
 (8) was involved. I know there was a Steven Downs that phased  
 (9) out at one point. I am still not sure. He was initially  
 (10) involved in the process but I am not sure post the flood  
 (11) whether he was still involved.  
 (12) Q. Did the Chewy project ultimately go to another  
 (13) competitor of Omnicare?  
 (14) A. Yes.  
 (15) Q. Are you allowed to tell me who that was?  
 (16) A. PCI Services, who was a subsidiary of Cardinal Health?  
 (17) Q. Where are they located?  
 (18) A. Can you rephrase that?  
 (19) Q. Where was with work being done geographically?  
 (20) A. The current work is being done in Puerto Rico, Humaco  
 (21) Puerto Rico.  
 (22) Q. What would the, if you know, what would the revenue to  
 (23) Omnicare had been had the Chewy project gone to Omnicare?  
 (24) A. I'm guessing that their margins are probably around 30  
 (25) percent, so I can maybe guess 5 or 10 million a year.

## Page 26

- (1) Q. That would be the amount that Novartis would pay to  
 (2) Omnicare, is that you understanding?  
 (3) A. No, I was trying to guess what their profit would be.  
 (4) Q. My question was revenue, not profit. What was Novartis  
 (5) going to pay to Omnicare for that work?  
 (6) A. On an annual basis?  
 (7) Q. Yes.  
 (8) A. Probably would have been somewhere in the neighborhood  
 (9) of 20 to 30 million.  
 (10) Q. Does Mr. Paulsen still work for Novartis?  
 (11) A. No.  
 (12) Q. Do you know where he is today, employed today?  
 (13) A. He is a consultant and his company name is Neptech  
 (14) Research, N-E-P-T-E-C-H.  
 (15) Q. Where is he located now, do you know?  
 (16) A. I believe he lives and resides in Charlotte, North  
 (17) Carolina.  
 (18) Q. When was the decision made to send the Chewy project  
 (19) elsewhere; do you recall?  
 (20) A. Around December 2001 to January 2002.  
 (21) Q. Was the time of that decision effected by the flood at  
 (22) Omnicare?  
 (23) A. Perhaps indirectly.  
 (24) Q. Can you explain how indirectly?  
 (25) A. It is in and around the time of the flood. We had

## Page 27

- (1) narrowed our decision down to two companies, Omnicare and  
 (2) CVM. And post the flood and giving all of the other  
 (3) factors, we decided to look for up to three additional  
 (4) companies. We identified two additional companies.  
 (5) Q. What was the reason for determining after the flood to  
 (6) find three additional companies?  
 (7) A. Based on the concerns that I discussed earlier like the  
 (8) experience that Omnicare possessed as well as the necessity  
 (9) that we would have to move the equipment. And we were also  
 (10) against the clock, so we were looking at timing and had to  
 (11) act quickly, whatever we decided. I would say that Omnicare  
 (12) was our leading choice but we weren't really comfortable  
 (13) with making that decision unless we were left with no other  
 (14) choice.  
 (15) Q. Was there anyone else besides Steve Purdy that you  
 (16) dealt with am Omnicare?  
 (17) A. Ken Feld, I believe is the President, Vice President of  
 (18) that pharmaceutical division, and again Steven Downs. I  
 (19) think his business is involved. William Scultheis business  
 (20) development, I think he replaced Steven Downs.  
 (21) Q. And?  
 (22) A. And then every once in a while we would talk to an  
 (23) analyst. Let's see there was Larry, I can't remember his  
 (24) last name. He was like the director of analytical. But  
 (25) most of my main contact was with Purdy, Steve Purdy, on

## Page 28

- (1) project management issues. And then Bill and Steve for new  
 (2) business.  
 (3) Q. You said that there was several things in the decision  
 (4) making process with regard to the Chewy project, one of  
 (5) which was that you didn't want that work to take place in  
 (6) the Fort Washington facility. Would there have been any  
 (7) possibility of Novartis going ahead with the Chewy project  
 (8) with Omnicare at the Fort Washington facility regardless of  
 (9) the other factors in the decision making process?  
 (10) MR. HUBER: Objection to the form of the  
 (11) question.  
 (12) MR. SHARE: Do you understand what I am  
 (13) asking?  
 (14) THE WITNESS: (Nodding.)  
 (15) MR. SHARE: Once the flood occurred and you  
 (16) had decided that you didn't want to Chewy project to be  
 (17) performed long term at the Fort Washington facility, was  
 (18) there anything else -- was there at that point any  
 (19) possibility of the Chewy project going to Omnicare at the  
 (20) Fort Washington facility from Novartis' standpoint?  
 (21) THE WITNESS: For the commercial products  
 (22) no, for the development and the batches, it was being  
 (23) considered.  
 (24) BY MR. SHARE:  
 (25) Q. What percentage of the \$20 to \$30 million figure was



## Portnoy vs. Omnicare Pharmaceuticals, Inc. -

Depo of: JEFF MOORE

BSA

XMAX(10/10)

## Page 37

- (1) A. Right. They were proposing facilities and if awarded  
 (2) the contract would have purchased it.  
 (3) Q. So you opened the bids up again to two new companies,  
 (4) DSM and PCI?  
 (5) A. Correct.  
 (6) Q. Did they have their own facilities?  
 (7) A. Yes.  
 (8) Q. Did they also have experience in the field of  
 (9) commercial drug distribution?  
 (10) A. Can you rephrase that, the distribution word is  
 (11) uncertain.  
 (12) Q. Did they also have experience in the field of  
 (13) commercial drug manufacturing?  
 (14) A. DSM has extensive experience. PCI or the division we  
 (15) were dealing with has a lot of package experience but very  
 (16) little to no direct manufacturing experience.  
 (17) Q. Why were DSM and PCI excluded from the initial request  
 (18) for proposal?  
 (19) A. Actually I think, DSM was considered early, but they  
 (20) had rejected our offer the first time or two. PCI was  
 (21) excluded because I was unaware that they could manufacture  
 (22) products or had a facility in which to do that.  
 (23) Q. You later found out that they could?  
 (24) A. Yes. And we later asked DSM once again, would you  
 (25) please consider bidding on this project because we don't

## Page 38

- (1) have anyone who has experience doing it.  
 (2) Q. The bid that you eventually accepted, how did that  
 (3) compare to the bid that Omnicare made on the project?  
 (4) A. In what respect?  
 (5) Q. Price.  
 (6) A. For development or commercial?  
 (7) Q. Both.  
 (8) A. Omnicare's development cost were much less than PCI's  
 (9) and DSM's but Omnicare's commercial pricing was significantly  
 (10) more than PCI's or DSM's.  
 (11) Q. The majority of this work would have been the  
 (12) commercial work, right?  
 (13) A. Correct.  
 (14) Q. The \$20 million a year figure that you suggested was  
 (15) all commercial dollars right, none of that was development?  
 (16) A. Correct.  
 (17) Q. Did you ever compare DSM to Omnicare?  
 (18) A. Yes.  
 (19) Q. Which bid would have been preferable?  
 (20) MR. SHARE: Objection. You can answer.  
 (21) MS. CLARK: You can answer.  
 (22) THE WITNESS: Just price was just, I think,  
 (23) a small factor in the overall decision. So again there  
 (24) were pros and -- the development costs were attractive from  
 (25) Omnicare; and however, the commercial costs were less

## Page 39

- (1) attractive.  
 (2) BY MR. HUBER:  
 (3) Q. But you never made the comparison of the two bids to  
 (4) decide which you liked better?  
 (5) A. We compared costs of between Omnicare and DSM but cost  
 (6) was not the major decision maker.  
 (7) Q. After the flood in June of 2001, did you continue to  
 (8) have services performed for you in the Omnicare facility in  
 (9) Fort Washington?  
 (10) A. Yes.  
 (11) Q. Can you describe the services that you continued to  
 (12) have performed for you there?  
 (13) A. Omnicare continued to do analysis on the stability  
 (14) samples of the Econor project and the Praziquantal product.  
 (15) Q. How long did that work continue in that facility?  
 (16) A. We moved those products out and in March-April time  
 (17) frame so that was roughly eight months.  
 (18) Q. March or April of 2002?  
 (19) A. 2002, yes.  
 (20) Q. Why did you move those products -- those projects out  
 (21) of that facility?  
 (22) A. Because they, Omnicare, informed us that they would be  
 (23) discontinuing work in that facility.  
 (24) Q. If Omnicare hadn't chosen to shut down that facility,  
 (25) would you have left your work there?

## Page 40

- (1) A. Yes, that particular work, yes.  
 (2) Q. You said that Omnicare sent you some photographs of  
 (3) your product after the flood?  
 (4) A. Yes.  
 (5) Q. Do you have those somewhere?  
 (6) A. I believe so.  
 (7) Q. Do you also have a file that would contain notes or  
 (8) communications between you and Omnicare regarding the Chewy  
 (9) project and the events arising out of the -- the events  
 (10) occurring after the flood?  
 (11) A. Not as it pertains to the Chewy project, no direct  
 (12) communications about the flooding issue and project. I  
 (13) don't know that I have any notes on that.  
 (14) Q. Nothing in writing?  
 (15) A. Right. No written communications because it had no  
 (16) direct impact on that product, only an impact on the  
 (17) decision making.  
 (18) MR. HUBER: I would, I guess this is  
 (19) directed to your counsel. I guess I would like if you  
 (20) would make available the file with the documents that you  
 (21) have related to the Omnicare decision making issues and  
 (22) communications with Omnicare relating to the work that they  
 (23) did at the facility post-flood?  
 (24) MS. CLARK: I don't think it is necessary as  
 (25) long as he has independent recollection of what those

## Portnoy vs. Omnicare Pharmaceuticals, Inc. -

Depo of: JEFF MOORE

BSA

XMAX(12/12)

## Page 45

- (1) THE WITNESS: I am certain that we would not  
 (2) have done the commercial work at that facility.  
 (3) Development work was a small possibility, again we were  
 (4) concerned with the development work and then having to move  
 (5) it to a commercial facility.  
 (6) BY MR. HUBER:  
 (7) Q. If steps could have been taken to provide you with  
 (8) comfort that the facility was protected from future floods,  
 (9) would that have impacted on your decision making process?  
 (10) A. It may have influenced it. I am not sure the result  
 (11) would have been different but, I mean we are alerted that  
 (12) the Corp of Engineers were making changes and that it  
 (13) shouldn't happen again. But until you get a deluge like  
 (14) they had, you are never quite sure. So it is -- the chances  
 (15) are one in a million. Maybe that is more risk than we were  
 (16) willing to take.  
 (17) Q. Did any of the other entities that you considered for  
 (18) this project have facilities that had their own geographic  
 (19) risks?  
 (20) A. Yes, I would say that all manufacturers are subject to  
 (21) geological risks in one way or another.  
 (22) Q. And you considered all of those risks as a part of the  
 (23) decision making process?  
 (24) A. Yes.  
 (25) Q. At the time you were considering the Fort Washington

## Page 46

- (1) facility for the Chewy project, did you know who your  
 (2) customers for this new product was going to be?  
 (3) A. Yes.  
 (4) Q. In general, who were they?  
 (5) A. Dog owners in the US.  
 (6) Q. And the product would have been sold through pharmacys  
 (7) or veterinarians?  
 (8) A. Through veterinarians.  
 (9) Q. And you get input from veterinarians regarding the  
 (10) location or the facility at which your drugs are  
 (11) manufactured?  
 (12) A. No.  
 (13) Q. So are the concerns of the veterinarians regarding  
 (14) where the facility at which the drugs are manufactured not  
 (15) considered as far as your decision making process?  
 (16) A. They are not considered.  
 (17) EXAMINATION  
 (18) BY MR. SHARE:  
 (19) Q. Where were the other manufacturing sites for the  
 (20) Chewy project located, potential manufacturing sites?  
 (21) A. DSM Catalyica is located in Greenville, North Carolina  
 (22) and a proposed manufacturing site by PCI services was  
 (23) located in Humaco in Puerto Rico.  
 (24) Q. Were there any specific geologic risks associated with  
 (25) those other sites that you were made aware of during the

## Page 47

- (1) selection process?  
 (2) A. Intuitively, I knew of risks, no one brought  
 (3) specifically to my attention those risks. Plus I had worked  
 (4) at Catalyica, and I knew of geological risks there.  
 (5) Q. In Greenville?  
 (6) A. Yes.  
 (7) Q. What risks?  
 (8) A. DSM and the Greenville area of North Carolina sustained  
 (9) significant damage due to the floods during Hurricane Floyd.  
 (10) However, the DSM site was unaffected by that particular  
 (11) flood with the exception of being shut down because people  
 (12) couldn't physically get there.  
 (13) Q. But no manufacturing was adversely effected?  
 (14) A. Other than interruption of production, no direct damage  
 (15) to any of the products.  
 (16) Q. What about the Puerto Rico site?  
 (17) A. I would think that Puerto Rico is very vulnerable to  
 (18) hurricanes.  
 (19) Q. Do you have any specific information about the Puerto  
 (20) Rico site having been damages or flooded by a hurricane?  
 (21) A. I don't have any specific information but I am not  
 (22) aware that they were ever flooded or walls knocked down or  
 (23) anything because of a hurricane.  
 (24) Q. And that is where the project ultimately went?  
 (25) A. Yes.

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- (1) EXAMINATION  
 (2) BY MR. HUBER:  
 (3) Q. In reference to Hurricane Floyd, that was the hurricane  
 (4) that took place in 1999?  
 (5) A. That -- I believe is correct.  
 (6) Q. Do you know whether or not the Fort Washington facility  
 (7) of Omnicare suffered any flood damage as a result of  
 (8) Hurricane Floyd?  
 (9) A. I believe that they had, the area, the Fort Washington  
 (10) area had been impacted by flash flooding. But I don't know  
 (11) if it was due to Floyd or just some other storm. I don't  
 (12) think that facility sustained any damage but I think  
 (13) neighboring facilities had.  
 (14) Q. Did you know that Omnicare had another facility in the  
 (15) some corporate park, right across the street from the one in  
 (16) which you were considering the Chewy project?  
 (17) A. Now that you mentioned it. They had informed me that  
 (18) there was another facility. And I believe maybe it had been  
 (19) impacted by previous water, but maybe the main facility  
 (20) where we were doing work had not.  
 (21) Q. Did you ever go into that second facility?  
 (22) A. No.  
 (23) Q. I am told that the second facility is less than 100  
 (24) yards from the first one. That would jive with your  
 (25) understanding?

Exhibit O



1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 NO. 02-CV-2905

4 BARRY M. PORTNOY and GERARD ) DEPOSITION UPON  
M. MARTIN, as Trustees for )  
5 HUB PROPERTIES TRUST ) ORAL EXAMINATION  
6 - vs - ) OF  
7 OMNICARE PHARMACEUTICS, INC. ) KEN FELD  
and OMNICARE CLINICAL )  
8 RESEARCH, INC. )  
-----

9  
10  
11 TRANSCRIPT OF DEPOSITION, taken

12 by and before KRISTIN N. LAFTY, Professional  
13 Reporter and Notary Public, at the Law Offices  
14 of OBERMAYER, REBMANN, MAXWELL & HIPPEL, LLP,  
15 19th Floor, One Penn Center, 1617 JFK Boulevard,  
16 Philadelphia, PA, on Wednesday, April 9, 2003,  
17 commencing at 10:15 a.m.

18  
19  
20  
21  
22 REPORTING SERVICE ASSOCIATES (RSA)  
A Veritext Company  
23 1845 Walnut Street - 15th Floor  
Philadelphia, Pennsylvania 19103  
24 (215) 241-1000



KEN FELD

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1 work to be done on the first floor of 525?

2 A. No. Because we weren't manufacturing  
3 on the first floor of 525. But they were  
4 sending packaging work, some secondary packaging  
5 work, which they knew would have to go back into  
6 that building. And they were questioning us and  
7 wanting to know as time ran on and our planning  
8 and our discussions internally and with clients  
9 externally was that we were planning now to  
10 reestablish the business back in Fort Washington  
11 at 525 Virginia Drive. All they wanted to know  
12 was when you are going to be up and running. We  
13 have more work for you to do.

14 Q. Did AstraZenica ever tell you anything  
15 about doing more work at 525 as opposed to  
16 another location?

17 A. Immediately after the flood?

18 Q. At any time.

19 A. No. I'm just saying, immediately  
20 after the flood, AstraZenica, the people that  
21 came from AstraZenica -- again, these were not  
22 the decision makers -- made a statement that  
23 they probably would not do further business if  
24 Omnicare Pharmaceuticals relocated at 525 Virginia

KEN FELD

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1 Drive. As time wore on and we were making plans  
2 ourselves to reestablish the business in 525  
3 Virginia Drive, AstraZenica wanted to know when  
4 we would be up and running in that facility.  
5 They were going to send us more work.

6 Q. Who told you that?

7 A. Who told me that?

8 Q. Who at AstraZenica told you that?

9 A. I spoke to a couple people at  
10 AstraZenica. I don't remember their names.

11 Q. I'm sorry. Can you please try to  
12 remember their names?

13 MR. PARRY: Can you try?

14 THE WITNESS: I don't  
15 remember their names.

16 BY MR. SHARE:

17 Q. Was AstraZenica a large customer of  
18 OPI or a small customer?

19 A. No. They were a large customer.

20 Q. Were they the largest customer?

21 A. Yeah.

22 Q. And who interacted with AstraZenica on  
23 a regular basis?

24 A. Primarily the business development and

KEN FELD

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1 the effect of the impact of the flood and  
2 continued work in that area. Again, I was using  
3 this as an opportunity to try to do something  
4 better for the business. Because in order to  
5 rebuild the business, one way or another, there  
6 was going to have to be capital monies approved.

7 Q. You are talking about August of 2001  
8 on this document, right?

9 A. Right.

10 Q. That's two months after the flood?

11 A. That's right.

12 Q. Were there client concerns about flood  
13 issues in August of 2001 when this was put to  
14 paper?

15 A. I don't know. I don't know what was  
16 in the client's mind at that point in time. Our  
17 ongoing conversations was that they wanted to  
18 know when we were going to recover our business,  
19 what the timing was. They wanted to send us  
20 more work.

21 Q. Okay. Let's look at scenario four.  
22 Do you see on the left-hand column, second  
23 bullet point talks about going to a different  
24 building there, too, right, replacement

Exhibit P





## JAMES MCDEVITT

38

1 A. Nothing.  
 2 Q. Let me direct your attention back to  
 3 McDevitt 1118. At the very bottom of the page,  
 4 it's an entry for August 31st, 2001, Tuesday,  
 5 the very bottom of the page. It says, Greenspan  
 6 hold up construction.  
 7 A. Yes.  
 8 Q. Do you see that?  
 9 A. Yes.  
 10 Q. What were you referring to in that  
 11 entry?  
 12 A. Again, we were ready to start putting  
 13 the building back together.  
 14 Q. As of the date of that entry?  
 15 A. Yes. And put machinery in it. And  
 16 Ron was under a lot of heat to freeze capital.  
 17 As I mentioned before, the annual report shows  
 18 \$25 million cap X for the whole company, and we  
 19 needed 6 to 13. Well, somebody called up Ron,  
 20 and Ron read me the riot act. The very -- he  
 21 very sulfurously and angrily told me not to  
 22 spend another dime on capital, because he was in  
 23 hot water, I believe, with Dave Froezel. And we  
 24 needed 3 to 500 K to put that building back

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1 together. 300 to 500 thousand dollars. And he  
 2 said, don't do anything.  
 3 And we had a workforce --  
 4 you know, you have to imagine my position. I'm  
 5 walking into a building, and they are saying,  
 6 what are you going to do? Where is the  
 7 capital? And I called Ron back and I said, I  
 8 will go to Home Depot and buy my own drywall,  
 9 and I will have the workers install the drywall  
 10 and the rugs and the ceiling tiles at night.  
 11 And he told us no.  
 12 Q. First of all, when did you have the  
 13 discussion with -- did you have this discussion  
 14 with Mr. Greenspan on or about August 31st,  
 15 2001?  
 16 A. Yeah. Within a couple days, I came up  
 17 with that idea and I went to Ken about it. And  
 18 I said, Ken, if we can't hire contractors to  
 19 rebuild the building, I have a lot of guys here  
 20 that -- I myself can hang drywall and put rugs  
 21 in. And I thought it would be a good motivating  
 22 tool for the employees.  
 23 Q. When did Mr. Greenspan have that  
 24 discussion with Mr. Froezel about basically not

40

1 putting any more money into the construction  
 2 efforts?  
 3 A. It was within that time frame.  
 4 Q. Did anyone else at Omnicare, whether  
 5 it was the parent corporation or clinical  
 6 research organization, ever make any similar  
 7 types of statements?  
 8 A. Not that I'm aware of. The point is  
 9 that there was -- the capital required to  
 10 rebuild the building was frozen. And that's  
 11 when we -- the only operation we brought back  
 12 was the Virbac packaging, which was a  
 13 contractual obligation. And then we just  
 14 retrofitted a few primary packaging rooms and  
 15 put a Mack machine there. And that was it.  
 16 Q. Mr. McDevitt, if you could turn to  
 17 page McDevitt 1127, towards the middle of the  
 18 page -- I know the copy is a little light. But  
 19 there appears to be an entry date of August  
 20 10th. Do you see that on the right-hand side?  
 21 A. Uh-huh.  
 22 Q. Right below the entry date it says,  
 23 Per Mark Cantalamessa.  
 24 A. Uh-huh.

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1 Q. And right below that, I can't quite  
 2 make your handwriting out. If you could just  
 3 read that for the record.  
 4 A. It's, Lisa present. Lisa was the  
 5 accounting manager in the CRO. She was trying  
 6 to get a handle on the losses associated with  
 7 the flood.  
 8 Q. And right below that line it says, no  
 9 insurance?  
 10 A. Yes.  
 11 Q. Let me just refer to the rest of the  
 12 entry, if you don't mind. To the right of the  
 13 entry date 8/10, it says, AE. Do you see that?  
 14 A. Yes.  
 15 Q. All in caps. With an arrow to A.  
 16 A. Yeah.  
 17 Q. And then it says, limit 2.5 million  
 18 dollars?  
 19 A. Uh-huh.  
 20 Q. Right below it, it says 50 million  
 21 dollars. Is that blanket limit?  
 22 A. Uh-huh. Yes, sir.  
 23 Q. Coma flood included?  
 24 A. Yes.

PM  
8/21/01

Budget

8/30/01 (GO Meeting)

→ Celebrex →

HAMIL →

3/5 431 4918

1X 03 00 07 L6

Comm Note → Payroll

MON

→ Campoli

Drawings, civil & structural? ✓

8/30/01

1-215-979-8067

→ ALLIANCE

ALLIANCE ✓

{ Billings, INVOICING, AP's, }  
→ JUNE

JUNE

MCCANN

{ Space requirements  
35-40 buildings  
space requirements

Ref lead Est dev.  
11/4 530 2251

RELOCATION

TEVA

→ Penhard contracted TEVA  
on what to do w inventory

Tues

8/31/01

Presentation (MR'S)

- Burns - called

Ken Granger led up construction

Exhibit Q







## OLGA CROWTHER

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1 Q. They weren't manufacturing or  
2 packaging drugs there for quite a while?  
3 A. That's correct.  
4 Q. That I assume was not acceptable to a  
5 company such as yours that had ongoing needs and  
6 needed the drugs right away to perform your  
7 clinical research projects; isn't that right?  
8 A. That's correct.  
9 Q. So is it fair to say under those  
10 circumstances, AstraZeneca had to go and find  
11 alternate sources of manufacturing of its drugs  
12 so that it could continue its clinical research  
13 projects?  
14 A. Absolutely. It was crucial.  
15 Q. You were on a time line. And if it  
16 couldn't be done at Omnicare Pharmaceuticals in  
17 Fort Washington, you had to find a place that  
18 could do it for you and meet your deadlines?  
19 A. Correct.  
20 Q. How long did it take for you to find  
21 an alternative source of manufacturing for the  
22 drugs that were being made in the Omnicare  
23 facility in Fort Washington?  
24 A. Within a month.

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1 Q. So by July 17, 2001, you had a new  
2 facility up and running?  
3 A. That's correct.  
4 Q. Did you have a role in choosing the  
5 new facility for these projects?  
6 A. Yes, I did.  
7 Q. And what role was that?  
8 A. Of an auditor again. Audited a couple  
9 of facilities for the validity of the  
10 manufacturing of the Coumadin. That was the  
11 crucial thing.  
12 Q. Is there a big investment required by  
13 AstraZeneca in shifting manufacturing  
14 facilities?  
15 A. Yes, there is.  
16 Q. Can you tell me about that?  
17 A. We have to re-qualify or qualify a  
18 vendor. We have to transfer techniques and  
19 knowledge to the new vendor. We have to monitor  
20 and assure that the new vendor is meeting the  
21 AstraZeneca needs. Yes, tremendous.  
22 Q. So it's not the kind of thing where if  
23 you decided one day, you know, I want to switch  
24 from this facility to the next, you would just

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1 do it on a whim?  
2 A. No.  
3 Q. There would be significant expense  
4 involved in changing facilities?  
5 A. Correct.  
6 Q. When you performed these projects,  
7 such as the Exanta project or the Candesartan  
8 project, do you ever have the drugs used for  
9 those projects made in more than one facility?  
10 A. Not to my knowledge.  
11 Q. They are always done in one facility?  
12 A. That's correct.  
13 Q. And I assume that's for cost purposes?  
14 A. Not entirely cost. It has to do with  
15 the vioquince of the drugs and the way that the  
16 raw materials are brought in. And that is the  
17 way the people are trained to do the job. And  
18 we want each batch to be as controlled as  
19 possible, one the same as the other.  
20 Q. So there's a danger that if you are  
21 manufacturing the drug in two separate  
22 facilities that there might be some subtle  
23 differences?  
24 A. Could be.

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1 Q. So it's preferable to have them all  
2 manufactured in the same facility?  
3 A. Right. If you want to manufacture in  
4 two different facilities, you would have to run  
5 many more studies to compare the two facilities,  
6 not only analytically wise, but with patients.  
7 Q. So once the decision was made to move  
8 these two -- these six studies from the Omnicare  
9 facility to a different facility, it would have  
10 been very expensive to switch back to the  
11 Omnicare facility; is that true?  
12 A. Yes, it would have been. Because the  
13 Omnicare facility will have to be re-qualified,  
14 all the equipment will have to be re-qualified  
15 for the use for AstraZeneca. Everything will  
16 have to be new.  
17 Q. And whose expense is that?  
18 A. Both AstraZeneca and Omnicare.  
19 Q. Immediately after the flood, were you  
20 advised by Omnicare when it was -- what it is  
21 they intended to do about getting their facility  
22 at 525 Virginia Drive up and running again?  
23 A. Yes. Soon after the flood -- we had  
24 contact with them every day. I mean, it was an

## OLGA CROWTHER

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1 open contract. They were very helpful. And,  
 2 yes, they wanted to get their facility up and  
 3 running. They knew it was going to take a while  
 4 to get it back up and running in Virginia  
 5 Drive. But to my knowledge, they had intent to  
 6 do business there or continue the business.  
 7 Q. Why do you say that?  
 8 A. They didn't want to lose AstraZeneca  
 9 as a business partner.  
 10 Q. If they were able to get that  
 11 facility up and running within the month, then  
 12 there would have been no need to switch the  
 13 program over to your -- to this new facility; is  
 14 that right?  
 15 A. In my opinion, they could not do  
 16 the -- have the facility up and running within a  
 17 month because all of the manufacturing and  
 18 packaging equipment was destroyed by the flood.  
 19 Q. So you think it would have been  
 20 physically impossible to get up and running  
 21 within a month?  
 22 A. In my opinion, yes.  
 23 Q. How long do you think it would have  
 24 taken them to get the facility up and running?

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1 A. Many months. Because -- oh, yes.  
 2 They had to disinfect all the area. They cut  
 3 walls out. They had to prove that there were no  
 4 micros anywhere, extensive.  
 5 Q. Three months?  
 6 A. I can't say. But, yeah.  
 7 Q. I'm looking for an approximation from  
 8 you since you seem to have some knowledge of  
 9 this area.  
 10 A. Perhaps three months with extensive  
 11 microbio testing, and if they could get their  
 12 machines made from someplace else.  
 13 Q. Because they would have had to get all  
 14 new machines as well?  
 15 A. In my opinion, yes.  
 16 Q. So if the investment was made to fix  
 17 the facility, disinfect it, run all the  
 18 appropriate tests and get machinery that was not  
 19 impacted by the flood, you think they possibly  
 20 could have done that in approximately three  
 21 months?  
 22 A. Perhaps. It's extensive.  
 23 Q. Three months. However, it didn't fit  
 24 AstraZeneca time line, right?

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1 A. Absolutely not.  
 2 Q. You couldn't go three months without a  
 3 supply of the drugs for the tests that you were  
 4 running?  
 5 A. Absolutely not.  
 6 Q. Where did you send the Exanta and  
 7 Candesartan drug tests after you took them from  
 8 Omnicare Pharmaceuticals?  
 9 A. Can you please define tests?  
 10 Q. Actually, let me change that to, where  
 11 did you send the packaging and manufacturing  
 12 operations of those six studies after you took  
 13 them from Omnicare Pharmaceuticals?  
 14 A. To two different sites -- three  
 15 different sites. The manufacturing went to one  
 16 site and the -- and the primary packaging was in  
 17 the same place and the labeling in another  
 18 place. The Candesartan went, I believe, back to  
 19 Newark, our own facility.  
 20 Q. The Exanta, where did that go?  
 21 A. The Exanta was packaged at one  
 22 facility, yes.  
 23 Q. What facility?  
 24 A. Fisher Pharmaceuticals.

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1 Q. Is that similar to Fisher Scientific?  
 2 A. Fisher Scientific, yes.  
 3 Q. So it went to one of Omnicare's  
 4 competitors?  
 5 A. Correct.  
 6 Q. Had you been doing business with  
 7 Fisher Scientific as of July 2001?  
 8 A. Yes.  
 9 Q. They were packaging and manufacturing  
 10 drugs for AstraZeneca?  
 11 A. Yes.  
 12 Q. Were they a preferred vendor?  
 13 A. I'm not sure if they were a preferred  
 14 vendor in 2001. But they are a preferred vendor  
 15 now.  
 16 Q. Do you know what volume of work was  
 17 being performed by Fisher Scientific in 2001?  
 18 A. No, I don't know that.  
 19 Q. Can you compare them to Omnicare as  
 20 far as volume of work?  
 21 A. Perhaps more, because the Zeneca side  
 22 used Fisher and did not use Omnicare.  
 23 Q. The Zeneca side of the business. And  
 24 by Zeneca side, are you referring to the United

## OLGA CROWTHER

<p style="text-align: right;">66</p> <p>1 boxes and warehouse them and send them away for 2 distribution. 3 Q. Did they do anything else for you 4 after the flood? 5 A. They continue, I believe, with the 6 analytical work that had previously been done. 7 They had stability studies and other things 8 going on for AstraZeneca. 9 Q. So the stability studies were taking 10 place in the 525 Virginia Drive facility, right? 11 A. Correct. 12 Q. So those studies continued after the 13 flood in the Virginia Drive facility? 14 A. As far as I know, they continued 15 testing for us. Because the analytical labs 16 were not affected by the flood. They were on 17 the second floor. 18 Q. Was there ever any conversations with 19 Omnicare regarding such as, okay, we suffered 20 this flood, but we want to get back to where we 21 were? What is it that we need to do to get 22 this -- to get this done with AstraZeneca? 23 A. My opinion was not asked of what is it 24 that we need to do to get back with</p>	<p style="text-align: right;">68</p> <p>1 back in the business. I'm trying to determine 2 what conversations, if any, took place between 3 AstraZeneca and Omnicare about getting back 4 into, you know, doing the work that they were 5 doing for you before the flood. Are you aware 6 of any such conversations? 7 A. Yes. In my opinion, they wanted to 8 get back on their feet. They wanted to keep 9 AstraZeneca as a customer. They wanted to be 10 very cooperating with AstraZeneca as much as 11 they could. But my opinion was not asked or how 12 or when they were going to be back on track. 13 Q. Okay. And I'm not looking for your 14 opinion. I am looking for your knowledge right 15 now. Are you aware of any such conversations 16 between Omnicare and AstraZeneca regarding 17 continuing their business relationship? 18 A. Yes. 19 Q. Who at AstraZeneca participated in 20 such conversations? 21 A. I'm not sure of the extent of the 22 people. But I do know that probably Ove was one 23 of those people, because the contract had been 24 with him and the stability studies. Probably a</p>
<p style="text-align: right;">67</p> <p>1 AstraZeneca. But it is my belief that there 2 were communications, and we do want to get back 3 on our feet and we want to continue doing 4 business. 5 Q. And who were those communications 6 with? 7 A. With Bob Braden and with the -- with 8 Mr. Bob Weston, which was QA. They all 9 reassured us that they did want to continue 10 doing business with AstraZeneca. 11 Q. Who was Bob Braden? 12 A. He was our contact person, like our 13 salesperson, coordinator. Carmen will be able 14 to tell you more who he is. 15 Q. So these are Omnicare employees? 16 A. Yes. 17 Q. Who were they talking with at 18 AstraZeneca? 19 A. With quite a few of us. I was part of 20 some of these conversations. 21 Q. Well, put yourself in the shoes of 22 Omnicare for the moment. Just suffered a flood, 23 AstraZeneca was a big customer, perhaps our 24 biggest customer, and you want to get yourself</p>	<p style="text-align: right;">69</p> <p>1 man named Larc Karlsson, who was an analyst, had 2 conversations with them, as well as Ingela 3 Abelin, being the QA person. And definitely the 4 IPS people who were dealing with them had 5 conversations with them. 6 Q. And whose decision would it have been 7 to continue that working relationship? 8 A. All of our decisions. 9 Q. Was there a vote? 10 A. There was never a decision point, 11 because Omnicare never was able to show us -- 12 build the facility again. 13 Q. Omnicare never renovated the 525 14 Virginia facility back into the condition it was 15 in prior to the flood, right? 16 A. Not to my knowledge. 17 Q. And they never opened another facility 18 in some other location that could perform the 19 same functions as they were performing at the 20 525 Virginia facility? 21 A. Not to my knowledge. 22 Q. You would have needed Omnicare to do 23 that before you could agree to send them the 24 work that you were sending prior to the flood?</p>

## OLGA CROWTHER

<p style="text-align: right;">70</p> <p>1 A. That's correct.</p> <p>2 Q. So because Omnicare never offered you</p> <p>3 such facilities to manufacture your drugs, you</p> <p>4 never had to decide whether or not you were</p> <p>5 going to send them business again, right?</p> <p>6 A. Correct.</p> <p>7 Q. Did you ever have conversations with</p> <p>8 them saying that -- Omnicare ever say to you, we</p> <p>9 want to open up a facility again, we want to</p> <p>10 make sure you are going to send us your business</p> <p>11 before we invest in a new facility or repairing</p> <p>12 our old facility?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. Who was responsible for the dollars</p> <p>15 that you lost as a result of the flood?</p> <p>16 A. I'm not sure who is responsible.</p> <p>17 Q. Well, for example, did Omnicare</p> <p>18 reimburse you for the drugs that were lost as a</p> <p>19 result of the flood?</p> <p>20 A. I wasn't privy with that.</p> <p>21 Q. You mentioned that you toured the</p> <p>22 facility with an insurance adjustor?</p> <p>23 A. That's correct.</p> <p>24 Q. Did you have insurance that would --</p>	<p style="text-align: right;">72</p> <p>1 A. You know, I don't know that. Not long</p> <p>2 ago. But I cannot tell you a specific date.</p> <p>3 Q. Are you talking about a meeting that</p> <p>4 would have taken place after we would have sent</p> <p>5 our subpoena to AstraZeneca?</p> <p>6 A. Sure. Because we knew that there was</p> <p>7 such a request and request for documentation and</p> <p>8 that kind of thing.</p> <p>9 Q. Who participated in that meeting?</p> <p>10 A. People that were involved with these</p> <p>11 drugs.</p> <p>12 Q. Can you give me some names, please?</p> <p>13 A. Jim Thomas who is a TA for Exanta.</p> <p>14 Carmen Molina. Murray Ecker who is another</p> <p>15 product manager for Exanta. Ann Kesier, I</p> <p>16 believe, from the Candesartan side.</p> <p>17 Q. Ann Kezer?</p> <p>18 A. Was Ann Kezer? I'm not sure if Ann</p> <p>19 was there or not. I don't have my notes from</p> <p>20 the meeting per se. But there were quite a few</p> <p>21 people involved. Because we needed to gather</p> <p>22 documents for you.</p> <p>23 Q. Were there any attorneys there?</p> <p>24 A. At the meeting, yes.</p>
<p style="text-align: right;">71</p> <p>1 that covered some of the losses as a result of</p> <p>2 the flood?</p> <p>3 A. It is my understanding that</p> <p>4 AstraZeneca had an insurance company, policy.</p> <p>5 And the investigator came to look at that.</p> <p>6 Q. Do you know whether or not any of the</p> <p>7 losses were covered by insurance?</p> <p>8 A. No, I do not know that.</p> <p>9 Q. Have you had any conversations at all</p> <p>10 with anyone at Omnicare regarding the lawsuit</p> <p>11 that we're involved with?</p> <p>12 A. No, I have not.</p> <p>13 Q. When did you first become aware that</p> <p>14 Omnicare was involved in a lawsuit with its</p> <p>15 landlord?</p> <p>16 A. When I was requested to come to a</p> <p>17 meeting due to this. I was unaware of why I was</p> <p>18 being requested. And as a matter of fact, I</p> <p>19 missed the first meeting. So I had a recap</p> <p>20 given to me by Carmen Molina. And that was the</p> <p>21 first time I knew that we were in this</p> <p>22 situation.</p> <p>23 Q. When were you requested -- when was</p> <p>24 the first meeting that you were referring to?</p>	<p style="text-align: right;">73</p> <p>1 Q. Who was there?</p> <p>2 A. Chris was there.</p> <p>3 Q. And anyone else?</p> <p>4 A. No, not to my knowledge.</p> <p>5 Q. And the purpose of the meeting was</p> <p>6 simply to talk about what documents you had</p> <p>7 available responsive to our subpoena?</p> <p>8 A. First to inform us that this had</p> <p>9 happened, and then to -- since the subpoena</p> <p>10 needed some documents or assurance of some of</p> <p>11 the things that went on, for us to be starting</p> <p>12 to gather these documents out of our files and</p> <p>13 out of our computers.</p> <p>14 Q. You said there was a second meeting</p> <p>15 which you did attend?</p> <p>16 A. Yes. It was a telephone conference</p> <p>17 meeting.</p> <p>18 Q. And what happened at the second</p> <p>19 meeting?</p> <p>20 A. It was more or less talked of who will</p> <p>21 be the people that could come over here and do</p> <p>22 the deposition.</p> <p>23 Q. How was it determined that you were</p> <p>24 the lucky one?</p>

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1 on track.  
 2 A. Okay. It was a group of people,  
 3 including myself and Carmen Molina, and Ove for  
 4 the contract of the manufacturing and Ingela  
 5 Abelin. And all the TAs involved in the -- in  
 6 the -- with the drugs and the people monitoring  
 7 the studies to let us know what the critical  
 8 point was in which we had to have drugs sent  
 9 back to the sites. It was very extensive and a  
 10 lot of people involved.  
 11 Q. Do you know whether anyone at Astra  
 12 told anyone at Omnicare Pharmaceuticals that Astra  
 13 was not interested in doing further business  
 14 with Omnicare Pharmaceuticals as long as it was  
 15 going to be at the 525 Virginia Drive building  
 16 after the flood?  
 17 A. No, I am not aware of that.  
 18 Q. Flood risk, you say, is now part of  
 19 the policy and procedures for selecting  
 20 contractors, correct?  
 21 MR. CARLTON: Objection to  
 22 form. You can answer.  
 23 THE WITNESS: Not flood risk  
 24 per se. But questioning the different

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1 vendors about their site and their  
 2 flood plane and their contingency  
 3 plans.  
 4 BY MR. SHARE:  
 5 Q. Why is flooding now part of the  
 6 questioning that goes on for perspective  
 7 contractors?  
 8 A. Because we experienced a massive  
 9 amount of work and money and trauma trying to  
 10 re-supply our studies of drug. Having drug  
 11 destroyed by flood or fire is devastating to the  
 12 studies that goes on.  
 13 Q. Who is Ronald Halenback?  
 14 A. Ron Halenback was the head of IPS. He  
 15 no longer has that role.  
 16 Q. Is he still with the company?  
 17 A. Yes, he's still with the company.  
 18 Q. I want to show you a document. First  
 19 I'll -- take a look at that, and tell me if  
 20 you've had a chance to review it. And I'm  
 21 particularly interested in the top E-mail dated  
 22 June 21st, 2001.  
 23 MR. HABER: Are you going to  
 24 mark this?

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1 MR. SHARE: Once she tells  
 2 me.  
 3 THE WITNESS: What do you  
 4 want to know about this document?  
 5 BY MR. SHARE:  
 6 Q. Have you reviewed it?  
 7 A. Yes, I received it. And I have  
 8 reviewed it, yes.  
 9 Q. Do you recognize it?  
 10 A. Yes.  
 11 Q. Okay. Could you please hand it to the  
 12 reporter so she can mark it?  
 13 (At this time, AZ-1 and AZ-2  
 14 were marked for identification.)  
 15 BY MR. SHARE:  
 16 Q. I'd like to focus your attention on  
 17 what we've marked AZ-2. And we're just looking  
 18 really at the top -- top half of that page. Can  
 19 you tell me what that is? Is that an E-mail, a  
 20 printout of an E-mail?  
 21 A. This is a printout of an E-mail that  
 22 Ron sent after we have discussed some of the  
 23 impact of the flood on our product.  
 24 Q. And what's the date on that E-mail?

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1 A. That is June 21st, 2001.  
 2 Q. Do you recall receiving this E-mail?  
 3 A. Yes, I do.  
 4 Q. Is this E-mail one of the documents  
 5 that was gathered for -- to respond to  
 6 Mr. Haber's subpoena for today's deposition?  
 7 A. That is correct.  
 8 Q. Did you actually review this as part  
 9 of gathering of those documents?  
 10 A. Yes, I did.  
 11 Q. Looking at the second paragraph  
 12 beginning with "To Carmen's point." I will just  
 13 read that paragraph. "To Carmen's point, we  
 14 should look at alternative CROs to accomplish  
 15 those activities currently scheduled at  
 16 Omnicare. Their Fort Washington facility is in  
 17 a very bad condition at this time, and it is my  
 18 view that it would be months, paren, if at all,  
 19 end paren, before that specific facility would  
 20 be in condition for us to use it for our  
 21 clinical packaging activities. If we are to  
 22 remain with Omnicare, it would have to be at  
 23 another facility other than the one in Fort  
 24 Washington." Do you recall reading that message



## OLGA CROWTHER

<p style="text-align: right;">98</p> <p>1 document.</p> <p>2 A. Okay. What page?</p> <p>3 Q. The second page, there appears to be</p> <p>4 an E-mail dated June 20th, 2001, from Carmen</p> <p>5 Molina to Agneta Svenheden, S-V-E-N-H-E-D-E-N.</p> <p>6 MR. SHARE: You are looking</p> <p>7 at June 20th?</p> <p>8 BY MR. HABER:</p> <p>9 Q. On page two of the exhibit, the E-mail</p> <p>10 from Carmen Molina to Agneta Svenheden. It</p> <p>11 says, Dear Agneta, I just visited Omnicare along</p> <p>12 with Ron Hollenbeck, et cetera, et cetera, et</p> <p>13 cetera. Do you see that?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Did you receive that E-mail?</p> <p>16 A. Yes, I did.</p> <p>17 Q. And if you take a look at the third</p> <p>18 paragraph of the E-mail, it says, "Agneta, the</p> <p>19 team in US would like to move forward with</p> <p>20 looking for a new manufacturer to encapsulate</p> <p>21 the Coumadin supplies. I am thinking Omnicare</p> <p>22 will not be up and running soon enough to help</p> <p>23 us. How would you like to handle this? US</p> <p>24 could come up for a contract for US fairly</p>	<p style="text-align: right;">100</p> <p>1 the site and had seen that -- they were not</p> <p>2 allowed in the site, because it was unsafe at</p> <p>3 the time, but had seen the devastation of the</p> <p>4 area. And based on that observation, she knew</p> <p>5 that we could not continue manufacturing the</p> <p>6 supplies there. And that was a crucial need for</p> <p>7 our studies.</p> <p>8 Q. Is it fair to say that she knew that</p> <p>9 they couldn't continue manufacturing supplies</p> <p>10 there until a time which would have been too</p> <p>11 late for your needs?</p> <p>12 A. It was too late, yes.</p> <p>13 Q. So in response to that E-mail, there's</p> <p>14 an E-mail that appears -- that starts on page</p> <p>15 one and continues on page two from Agneta to</p> <p>16 Carmen, right?</p> <p>17 A. That's right.</p> <p>18 Q. And it looks like Agneta suggests</p> <p>19 regarding a new manufacturer, spontaneously I am</p> <p>20 hesitant to contact a new manufacturer, but I</p> <p>21 will bring it up with my team. From my point of</p> <p>22 view, the first option must still be to keep to</p> <p>23 Omnicare since we have worked up a lot of</p> <p>24 working experience with them regarding working</p>
<p style="text-align: right;">99</p> <p>1 quickly."</p> <p>2 A. That's right.</p> <p>3 Q. Tell me, does that relate to what you</p> <p>4 and I discussed earlier that you needed to get</p> <p>5 your drugs out to your clinical tests quickly,</p> <p>6 and you felt or Carmen felt that they were --</p> <p>7 Omnicare was going to be unable to accommodate</p> <p>8 your needs?</p> <p>9 A. Okay. Remember that there are two</p> <p>10 parts to getting the studies to the drug -- to</p> <p>11 the sites. One is the manufacturer of the</p> <p>12 over-encapsulation of the competitor's drug and</p> <p>13 the placebos for that; and the other one is the</p> <p>14 packaging and labeling and distribution of it.</p> <p>15 This paragraph refers only to the manufacturing</p> <p>16 part that Omnicare was performing for</p> <p>17 AstraZeneca.</p> <p>18 Q. Okay. And there was some concern that</p> <p>19 you needed somebody to encapsulate the Coumadin</p> <p>20 supplies?</p> <p>21 A. Absolutely. That was crucial.</p> <p>22 Q. And there was a concern that Omnicare</p> <p>23 couldn't do that five days after the flood?</p> <p>24 A. That's correct. Carmen had visited</p>	<p style="text-align: right;">101</p> <p>1 processes, analyses and data, et cetera, and</p> <p>2 also we have the legal agreement which took</p> <p>3 enormous efforts and long time to establish.</p> <p>4 A. That's correct.</p> <p>5 Q. "The bioequivalence study has been made</p> <p>6 comparing material manufactured at Omnicare --</p> <p>7 if we start up with a new CRO, there is a risk</p> <p>8 we need to do an additional BE study. I am not</p> <p>9 convinced that a new CRO contact would be able</p> <p>10 to supply quicker. However, to keep all options</p> <p>11 open - please let me know what CROs you had in</p> <p>12 mind for this work." Again, Agneta seems to</p> <p>13 say, I understand your concern, but, you know,</p> <p>14 timing is the key element here, right?</p> <p>15 A. That's right.</p> <p>16 Q. And I'm not convinced that you can go</p> <p>17 get somebody new to do anything faster than you</p> <p>18 could if Omnicare got back up and running. Is</p> <p>19 that the position she was taking?</p> <p>20 A. Let me tell you how I interpret this.</p> <p>21 Q. Please. That's what I'm asking for.</p> <p>22 A. Agneta was not here.</p> <p>23 Q. She was in Sweden?</p> <p>24 A. The Swedish people had only knowledge</p>

## OLGA CROWTHER

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1 would be in condition for us to use it for our  
 2 clinical packaging activities?  
 3 A. That's right.  
 4 Q. So he made the determination that, you  
 5 know, maybe his opinion was similar to yours,  
 6 that it would take three months or so to get  
 7 this facility back up and running. And you  
 8 didn't have three months?  
 9 MR. SHARE: Object to form.  
 10 BY MR. HABER:  
 11 Q. Is that right?  
 12 A. Yes, that's correct. We did not have  
 13 the time.  
 14 Q. Hence the sentence that – the  
 15 ultimate sentence of that paragraph, if we are  
 16 to remain with Omnicare, it would have to be at  
 17 another facility other than the one at Fort  
 18 Washington. Is it fair to say that that is  
 19 because you couldn't wait for Fort Washington to  
 20 be put back into condition for manufacturing?  
 21 A. Yes, I could assume that. Because we  
 22 needed the drug now. So if we need to  
 23 manufacture now, we have to go to another  
 24 facility, if Omnicare has such a facility.

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1 Q. You mentioned in your conversations  
 2 with Mr. Share enhancements to the policies and  
 3 procedures used to select vendors?  
 4 A. Yes.  
 5 Q. And you also mentioned that now armed  
 6 with the knowledge of what occurred in Fort  
 7 Washington, one of the things that you ask is  
 8 whether or not the facility was in a flood  
 9 plane?  
 10 MR. SHARE: Object to form.  
 11 BY MR. HABER:  
 12 Q. Is that right?  
 13 A. To qualify a facility now, we do ask  
 14 those questions. And if the – in my  
 15 experience, no one has said yes. But if the  
 16 answer was, yes, we're in a flood plane, then  
 17 the next question is, what are your plans if  
 18 such a thing will happen.  
 19 Q. So you answered two of my next  
 20 questions for me already. And it's your  
 21 testimony that none of your vendors have  
 22 answered, yes, we're in a flood plane?  
 23 A. That's correct.  
 24 Q. Is it your understanding that if a

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1 vendor had answered the question, yes, we are in  
 2 a flood plane, does that disqualify the vendor  
 3 from the possibility of doing work for you?  
 4 A. In my opinion, no, it will not  
 5 immediately disqualify the vendor. We will have  
 6 to – we will have to explore it further and  
 7 find out what the contingency plans are, what  
 8 they are doing about safeguarding their facility  
 9 from such a flood. I don't know, digging a  
 10 trench around the facility. I don't know.  
 11 Q. Well, do you also consider other than  
 12 the possibility of flood damage other  
 13 environmental hazards that might impact on the  
 14 facility's ability to perform the functions you  
 15 need?  
 16 A. Yes, we do.  
 17 Q. Such as, is the facility built on the  
 18 San Andreas Fault, and, therefore, it's subject  
 19 to earthquake damage? Is that the kind of thing  
 20 that you would also consider?  
 21 A. Not to that extreme. But we consider  
 22 fire, we consider electrical, power outages, we  
 23 consider things like that.  
 24 Q. Do you consider, for example, the

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1 location of the facility and the access to the  
 2 kinds of employees that you believe are  
 3 necessary to do the work that you need for your  
 4 studies?  
 5 A. Yes. We assess employee qualification  
 6 at their facility as training programs.  
 7 Q. Was that something that you did not  
 8 consider prior to the flood?  
 9 A. No. We did it prior to the flood.  
 10 Q. Okay. So after the flood, you started  
 11 to consider environmental considerations?  
 12 A. After the flood, we were more diligent  
 13 in asking environmental questions.  
 14 Q. Prior to the flood, you did consider  
 15 certain things about the location of the  
 16 facility, but didn't concentrate so much on  
 17 natural disaster risks?  
 18 A. That's correct. This was my first  
 19 experience with flooding.  
 20 Q. No one kind of filled you in on the  
 21 1999 flood and its impact on the business of  
 22 AstraZeneca?  
 23 A. To the point that we did not  
 24 discontinue work with them, I don't think the





Exhibit R

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3 BARRY M. PORTNOY and GERARD : NO.  
4 M. MARTIN, as Trustees for : 02-CV-2905  
5 HUB PROPERTIES TRUST, :  
6 Plaintiffs, :  
7 :  
8 :  
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22 :  
23 :  
24 :

vs.

6 OMNICARE PHARMACEUTICS, INC.:  
and OMNICARE CLINICAL :  
7 RESEARCH, INC., :  
Defendants. :

8  
9  
10 December 12, 2002  
11  
12

12 Oral deposition of DAVID L.  
13 FANT, held in the offices of Stevens &  
14 Lee, 111 North 6th Street, Reading,  
15 Pennsylvania 19602, at 11:02 a.m., on the  
16 above date, before Margaret Peoples, a  
17 Federally Approved Registered  
18 Professional Reporter and Notary Public  
19 of the Commonwealth of Pennsylvania.  
20  
21  
22  
23  
24

21 ESQUIRE DEPOSITION SERVICES  
15th Floor  
22 1880 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103  
23 (215) 988-9191  
24

DAVID L. FANT

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1 letter he's looking at. It's been  
2 marked Bates stamped Omnicare  
3 00211.

4 THE WITNESS: Yes. This is  
5 the letter that I received  
6 indicating that they would not be  
7 doing manufacturing at the Fort  
8 Washington facility, March of  
9 2002. It was later than I  
10 thought.

11 BY MR. HABER:

12 Q. So up until March of 2002  
13 was it your belief that Omnicare intended  
14 to resume operations in the Fort  
15 Washington facility?

16 A. I really didn't have any  
17 feeling one way or the other on it  
18 because at that time we had already had  
19 to move into other directions and had  
20 stopped any operations with Omnicare.

21 Q. If Omnicare had gotten the  
22 525 facility cleaned up and rebuilt to  
23 your satisfaction, would you have  
24 considered them for future work?

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1 A. They would have had to go  
2 back through a requalification of the  
3 facility for us. It's hard to say. It's  
4 speculation. I don't know.

5 Q. Okay. Well, all right. Let  
6 me ask the question from the opposite  
7 direction. Assuming they did all of the  
8 revalidation and cleanup that you  
9 described earlier, would you have ruled  
10 out the use of that facility because of  
11 the prior flood experience?

12 MS. FORD: Objection to  
13 form. Calls for speculation. You  
14 can answer.

15 THE WITNESS: I probably  
16 would not have ruled them out  
17 completely if it were for a single  
18 campaign, for a single run. If it  
19 had been a long-term run, knowing  
20 the possibility of another flood  
21 and what the impact that it could  
22 have on a clinical study, I  
23 probably would have used other  
24 facilities.

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1 BY MR. HABER:

2 Q. Did you do any business in  
3 that facility after June of 2001?

4 A. No.

5 Q. Do you know --

6 A. The only business we did was  
7 in getting the materials back, their  
8 paperwork.

9 Q. Do you know whether or not  
10 any product being manufactured for Sanofi  
11 was damaged by flood prior to June 2001  
12 at an Omnicare facility?

13 A. Not that I'm aware of.

14 Q. Did you know that two years  
15 prior in 1999 there was another flood  
16 that impacted the Omnicare facilities in  
17 Fort Washington?

18 MR. SHARE: Object to form.

19 MS. FORD: You can answer.

20 THE WITNESS: No, I am not  
21 aware of that.

22 BY MR. HABER:

23 Q. Were you contacted by anyone  
24 at Omnicare about the fact that they were

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1 in a dispute with their landlord?

2 A. No, I was not.

3 Q. How did you come to learn  
4 about the fact that your deposition was  
5 going to be taken?

6 A. The attorney for Omnicare  
7 contacted me.

8 Q. Who called you?

9 A. Adam Share.

10 Q. When did he call you?

11 A. I believe it was late summer  
12 of 2002. I don't know for sure. I know  
13 I was still working at Sanofi.

14 Q. How many conversations did  
15 you have?

16 A. Two or three.

17 Q. Were they all by telephone?

18 A. Yes.

19 Q. Were they substantive in  
20 nature?

21 A. Can you explain?

22 Q. Did you discuss anything  
23 other than the fact that Adam Share  
24 wanted to arrange your deposition?



CECW-PF  Engineer Pamphlet 1165-2-314	Department of the Army U.S. Army Corps of Engineers Washington, DC 20314-1000	EP 1165-2-314  15 December 1995
	FLOOD PROOFING	
	<b>Distribution Restriction Statement</b> Approved for public release; distribution is unlimited.	

## Preface

---

The original EP 1165-2-314, *Flood-Proofing Regulations*, was published in June of 1972. It has been distributed worldwide as an administrative and technical model for code design and enforcement. Over the years, it has been adopted by direct reference in thousands of local building codes across the United States. It also has served as the framework for the preparation of numerous other flood proofing publications, the flood resistant design criteria of the National Flood Insurance Program, and the development of similar design standards within the major national building code organizations.

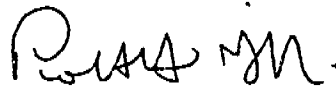
The U. S. Army Corps of Engineers National Flood Proofing Committee completely revised the original 1972 document to reflect almost 20 years of field experience, research, and advances in engineering and building practices. The revision, EP 1165-2-314, *Flood Proofing Regulations*, dated 31 March 1992, made numerous technical and editorial changes to most of the original chapters, updated the terminology, and addressed the minimum flood plain management requirements of the National Flood Insurance Program (NFIP) in relation to flood proofing regulations, particularly with respect to NFIP policy on residential flood proofing and wet flood proofing.

This publication supersedes the revised edition. However, with the exception of some clarifying changes to Chapter 2, Section 210, Classification and Posting of Buildings and Structures, it is the same as the superseded document. Changes have been made to the FP2 and FP4 space classification in Table 1 of Section 210.1 General on page 2-8 and to the classification descriptions in Sec. 210.3.1 FP3 and Sec. 210.3.2 FP4 on pages 2-8 and 2-9, respectively. These were needed to correct unclear statements on the classification of partially flood proofed structures. They distinguish between those structures that require "human intervention" to implement a contingency plan in order to achieve protection (FP4) and those that do not (FP3).

**NOTICE:** *States and local governments that have used Table 1 and/or the FP3 and FP4 classification descriptions from Section 210 of the superseded 31 March 1992 document in their building codes and regulations should take appropriate actions to correct them.*

As with its predecessor, this publication retains the format of the original 1972 document as model code language which can continue to be used by direct reference in local codes. It specifies the flood proofing measures and techniques that can be followed to regulate private and public building construction in riverine flood hazard areas. It contains implications for changes in existing building and housing codes and provides for a diversity of flood proofing methods and techniques. Chapters 2 through 13 have been prepared in a form that can be used to supplement existing building codes and regulations. If, on the other hand, a separate "flood proofing code" for direct adoption by States and local governments is desired, the flood proofing information contained herein also is sufficient for that purpose.

The Corps of Engineers is distributing this publication to continue the interest and application of flood proofing that, together with other flood plain management tools, will assist in reducing the threat to life, health, and property of users of flood hazard areas.



ROBERT H. GRIFFIN  
Colonel, Corps of Engineers  
Chief of Staff

This publication supersedes EP 1165-2-314 dated 31 March 1992. As with its predecessors, it was drafted for the Chief of Engineers by the U. S. Army Engineer District, Pittsburgh, PA.

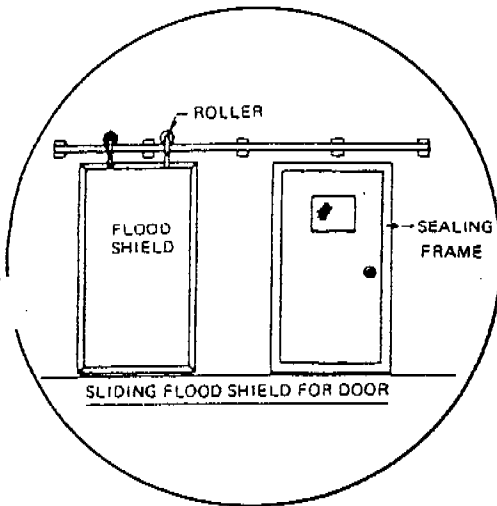
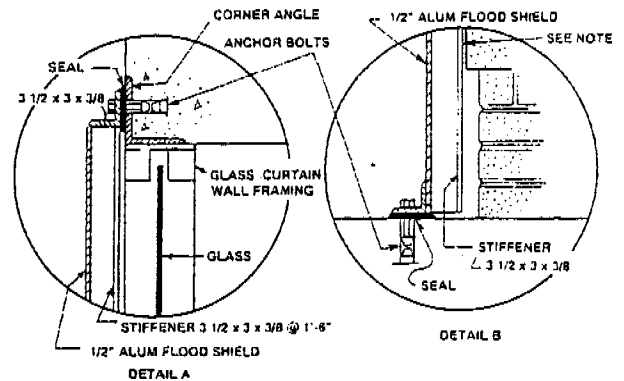
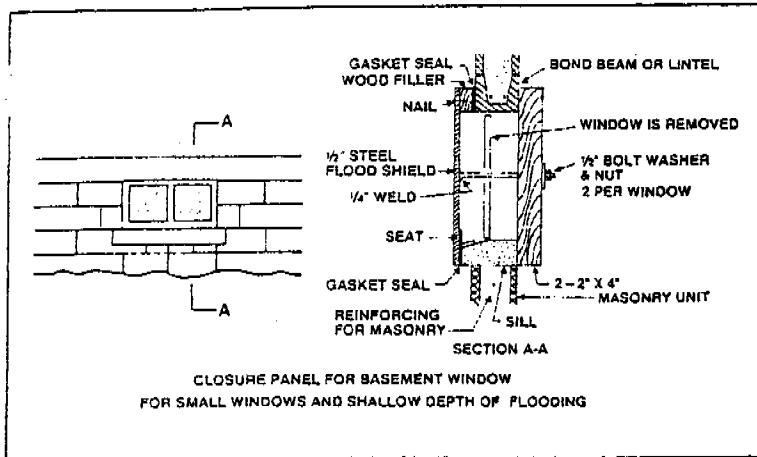
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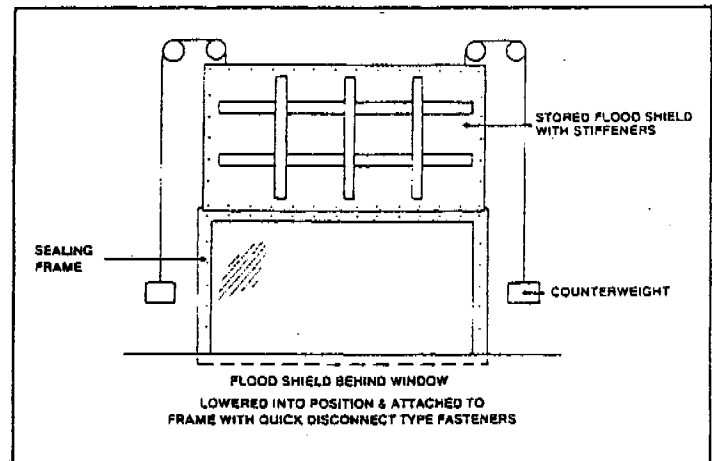
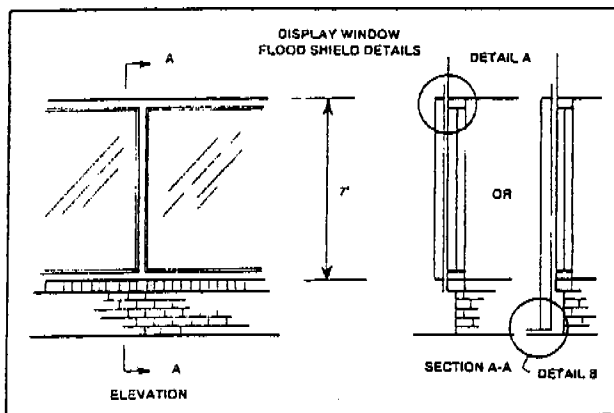
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EP 1165-2-314  
15 Dec 1995



# Flood Proofing Regulations



US Army Corps  
of Engineers

Washington, D.C. 20314 - 1000

## Chapter 3

# Definitions of Terms

---

### Section 300.0 Scope

Sec. 300.1 Purpose: For the purpose of these Regulations, certain abbreviations, words, and their derivatives shall be construed as set forth in this Chapter.

### Section 301.0 Definitions

Sec. 301.1 Accessory Use or Structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

Sec. 301.2 Artificial Obstruction - artificial obstruction shall mean any obstruction which is not a natural obstruction.

Sec. 301.3 Base Flood - a flood which is representative of large floods known to have occurred generally in the area or reasonably characteristic of what can be expected to occur on a particular stream or other body of water. This flood is generally being recognized and accepted nationally by Federal and non-Federal interests as one with an average frequency of occurrence on the order of once in 100 years (see 100-Year Frequency Flood and Figure 3).

Sec. 301.4 Building Code - the regulations adopted by a local governing body setting forth standards for the construction, addition, modification, and repair of buildings and other structures for the purpose of protecting the health, safety, and general welfare of the public.

Sec. 301.5 Building Official - the officer charged with the administration and enforcement of the Building Code and these Flood Proofing Regulations or a regularly authorized deputy.

Sec. 301.6 Channel - a natural or artificial watercourse of perceptible extent, with definite bed and banks to confine and conduct continuously or periodically flowing water. Channel flow thus is that water which is flowing within the limits of the defined channel (see Figure 3).

Sec. 301.7 Encroachment Lines - the lateral limits or line drawn along each side and generally parallel to a watercourse or body of water, to preserve the flood carrying capacity of the stream or other body of water and its flood plain, and to assure attainment of the basic objective of improvement plans that may be considered or proposed. Their location should be such that the floodway between them will effectively carry and discharge the base flood, or 100-year frequency flood (see Figure 3).

Sec. 301.8 Fill - the placing, storing, or dumping of any material, such as (by way of illustration but not of limitation) earth, clay, sand, concrete, rubble, or waste of any kind upon the surface of the ground which results in increasing the natural ground surface elevation.

Sec. 301.9 Flood - an overflow of lands adjacent to a river, stream, ocean, lake, etc., not normally covered by water. Otherwise it is normally considered as any temporary rise in stream flow or stage that results in significant adverse effects in the vicinity. Adverse effects may include damages from overflow of land areas, backwater effects in sewers and local drainage channels, creation of unsanitary conditions, soil erosion, deposition of materials during flood recessions, rise of groundwater coincident with increased streamflow, contamination of domestic water supplies, subsidence or collapse of land along a body of water, and other problems.

Sec. 301.10 Flood Crest - the maximum stage or elevation reached by the waters of a flood at a given location.

Sec. 301.11 Flood Plain - the area, usually low lands, adjoining the channel of a river, stream or watercourse or ocean, lake, or other body of standing water, which has been or may be covered by floodwater.

Sec. 301.12 Flood Plain Management - a term applied to the full range of public policy and action for ensuring wise use of flood plains. It includes the operation of an overall program of corrective and preventative measures for reducing flood damage, including, but not limited to emergency preparedness, plans flood control works and flood plain management.

Flood Proofing Regulations

**Sec. 301.13 Flood Plain Regulations** - a general term applied to the full range of codes, ordinances, and other regulations relating to the use of land and construction within flood plain limits. The term encompasses zoning ordinances, subdivision regulations, building and housing codes, encroachment laws, open area (space) and health regulations, grading and erosion control ordinances for purposes of reducing or preventing flood damage.

**Sec. 301.14 Flood Profile** - a graph or a longitudinal profile showing the relationship of the water surface elevation of a flood to location along a stream.

**Sec. 301.15 Flood Proofing** - a combination of structural changes and/or adjustments incorporated in the design and/or construction and alteration of individual buildings, structures or properties subject to flooding primarily for the reduction or elimination of flood damages.

**Sec. 301.15.1 Permanent Flood Proofing** - permanent protection would be provided against flooding which does not depend upon any judgment, flood forecast, or action to put flood protection measures into effect.

**Sec. 301.15.2 Contingent (Partial) Flood Proofing** - contingent measures would not be effective unless, upon receipt of a warning or forecast, some minimal action would be required to make the flood proofing measures operational.

**Sec. 301.15.3 Emergency (Temporary) Flood Proofing** - emergency measures would be, upon receipt of a warning or forecast, either improvised just prior to or during an actual flood or carried out according to an established emergency plan of action.

**Sec. 301.16 Floodway** - the channel of the stream or body of water and those portions of the flood plain which are reasonably required to carry and discharge floodwater or flood flow of the base flood or 100-year frequency flood (see Figure 3).

**Sec. 301.17 Floodway Fringe** - the area of the flood plain not lying within a floodway which may hereafter be covered by floodwaters up to the Base Flood (see Figure 3).

**Sec. 301.18 Freeboard** - a factor of safety usually expressed in feet above a design flood level for flood protection or control works. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions such as wave action, bridge opening and floodway obstructions, and the hydrological effects of urbanization of the watershed (see figure 1).

**Sec. 301.19 Habitable Room** - a space used for living, sleeping, eating or cooking, or a combination thereof, but not including bathrooms, toilet compartments, closets, halls, storage rooms, laundry and utility rooms, basement recreation rooms and similar spaces.

**Sec. 301.20 Natural Obstruction** - natural obstruction shall mean any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodway by a nonhuman cause.

**Sec. 301.21 Nonconforming Use** - a building or structure, or the use thereof, which was lawful before the passage or amendment of the (ordinance, resolution, act) but which is not in conformance with the provisions of these Regulations.

**Sec. 301.22 100-Year Frequency Flood** - a flood having an average frequency of occurrence on the order of once in 100 years although the flood may occur in any year (a one percent chance of being exceeded in any year). It is based on statistical analyses of streamflow records available for the watershed and analyses of rainfall and runoff characteristics in the general region of the watershed and is a statistical means of estimating the probability of flooding for insurance and land use planning. Over the life of a 30-year mortgage, there is approximately a 25- percent chance that this flood or one of a greater magnitude will occur. For these and NFIP regulations the base flood is the 100-year frequency flood.

**Sec. 301.23 Owner** - owner shall mean any person who has dominion over, control of, or title to land and improvements.

**Sec. 301.24 Reach** - a hydraulic engineering term to describe longitudinal segments of a stream or river. A reach will generally include the segment of the flood plain where flood heights are primarily controlled by

man-made or natural flood plain obstructions or restrictions. In an urban area, the segment of a stream or river between two physically identifiable points on the stream center line would most likely be designated as a reach.

**Sec. 301.25 Regulatory Flood Datum (RFD)** - established plane of reference from which elevation and depth of flooding may be determined for specific locations in the flood plain. It is the Base Flood plus a freeboard factor of safety established for each particular area which tends to compensate for the many unknown and incalculable factors that could contribute to greater flood heights than that computed for a Base Flood. (See Base Flood and Freeboard definitions for clarification of cumulative definition of Regulatory Flood Datum, and Figure 3.)

**Sec. 301.26 Special Flood Hazard Areas:** The lands adjoining the channel of a river, stream, or watercourse which would be covered by flood water during a base flood (100-year Flood). Flood Hazard Boundary Maps or Flood Insurance Rate Maps published by the Federal Insurance Administration of the Federal Emergency Management Agency identify Special Flood Hazard Areas. These can also be determined from flood hazard studies performed by agencies such as the U. S. Army Corps of Engineers, U.S. Geological Survey, Tennessee Valley Authority, Soil Conservation Service and from qualified professional engineer firms. Elevation differences should be clarified for community use and referenced to appropriate agency.

**Sec. 301.27 Subdivision** - the partitioning or dividing of a parcel or tract of land.

**Sec. 301.28 Subdivision Regulations** - regulations and standards established by a local unit of government with authority granted under a state enabling law, for the subdivision of land in order to secure coordinated land development, including adequate building sites and land for vital community services and facilities such as streets, utilities, schools, and parks.

**Sec. 301.29 Underclearance** - the lowest point of a bridge or other structure over or across a river, stream, or watercourse that limits the opening through which water flows. This is referred to as "low steel" in some regions.

**Sec. 301.30 Watercourse** - any natural or man-made depression with a bed and well-defined banks below the surrounding land serving to give direction to a current of water or pattern of runoff from a drainage area of any size.

## Chapter 11

# Contents of Buildings and Structures

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### Section 1100.0 Scope

**Sec. 1100.1 General:** This chapter shall govern the types of contents permitted and protection requirements for contents of spaces in buildings or structures located in Special Flood Hazard Areas.

**Sec. 1100.1.1:** The contents of an improvement consist of all items situated or placed within the confines of a space not permanently and structurally integral with the improvement. Electrical and mechanical equipment that is installed as a building services feature and/or required to be in operation during a flood is covered in Chapters 12 and 13. Contents are restricted by these Regulations whenever they are or potentially may be:

- (1) Hazardous to the general public welfare due to the possibility of spreading highly flammable, explosive, corrosive, or otherwise harmful substances in the event of a flood-induced spill.
- (2) Hazardous to the welfare of other Owners due to the creation of projectiles which could cause damage by impact.
- (3) Hazardous as in (1) or (2) above when stockpiled in quantity, although such items may be permitted if stored in lesser amounts for isolated or occasional use.
- (4) Hazardous to the health or safety of the Owner or to other persons occupying or in the vicinity of the improvement due to the possibility of explosion or electric shock caused by floodwater contact with operating mechanical or electrical equipment.
- (5) Vulnerable as a loss to the Owner, necessitating replacement, extensive repair, and/or excessive period of inoperation resulting from prolonged exposure to moisture, clean water, floodwater, or the unmitigated effects of flooding.

### Section 1101.0 Classes of Contents

**Sec. 1101.1 Applicability:** Contents are divided into seven classes according to the degree of flood proofing required to protect them from becoming hazards or losses as defined above.

- (1) Class XX items are extremely hazardous or vulnerable to flood conditions and require their prohibition in Special Flood Hazard Areas at all times.
- (2) Class X items are sufficiently hazardous or vulnerable to require their prohibition in all spaces below the RFD, i.e., requiring their placement at least one floor level above the RFD.
- (3) Class 1 items require the protection assured by W1 spaces.
- (4) Class 2 items require the protection assured by W2 spaces.
- (5) Class 3 items require only the protection assured by W3 spaces.
- (6) Class 4 items are generally not damageable by floodwaters moving at low velocities and require the minimum protection given by W4 spaces.
- (7) Class 5 items are sufficiently non-hazardous and non-vulnerable to permit their placement in spaces exposed to unmitigated flooding conditions.

**Sec. 1101.2 Waiver of Restriction:** Upon approval of the Owner's Contingency Plan, which shall include plans for temporary movement of items to a place of safe refuge above the RFD or in spaces below the RFD where these items are permitted, the Building Official may waive specific content restrictions for non-W1 spaces on non-hazardous items that are movable or for which the degree of waterproofing required by the flood proofing class can be achieved upon receipt of a flood warning or alert. This waiver of restriction, however, shall not apply to residences and their ancillary spaces; to firms, businesses, or institutions with fewer than 10 permanent employees and their ancillary spaces; or to any spaces which are or would be unoccupied and unattended in their foreseeable normal yearly operation for periods greater than 72 hours; and in no case shall a waiver of restriction be construed to permit the creation of spaces for human habitation.

**Sec. 1101.3 Contents Classes for Typical Items:** The following chart is intended as an aid to the Owner, Architect/Engineer, and the Building Official in assessing the hazard potential and vulnerability to loss of typical contents of an improvement with respect to criteria listed in 1100.1.1(1-5). In disputes arising over the classification of particular items or of items not listed below, the Building Official shall be guided by and decide on the basis of those criteria. In no case, however, shall changes of classification for items listed in Classes X and XX be permitted.

**Sec. 1101.3.1:** Contents of a given class may be situated or placed in any space for which a lower-numbered class is permitted by these Regulations. For example, items which are listed in Class 3 may also be placed in any spaces in which Class 1 or Class 2 contents are permitted.

**Sec. 1101.3.2:** Temporary placement of items of a given contents class in a space with a higher-numbered flood proofing class may be permitted in those cases where contingent removal is approved by the Building Official, and in conformance with 1101.2. Temporary placement may be permitted for certain items, subject further to the restrictions of 1101.2 as indicated by numbers in parenthesis in the list; in each case, the number in parenthesis is that of the highest-numbered flood proofing class in which temporary placement may be considered.

	Class
Acetone	XX
Acetylene gas containers	X
Ammonia	XX
Animals (pets, livestock, laboratory specimens)	X(5)
Appliances, electrical	
Washers, dryers, unit air conditioners, lamps,	
refrigerators, sewing machines, electric clocks, etc.	2
Art works (paintings, sculpture, etc.)	1
Barrels, buoyant (empty or non-hazardous contents)	2
Constrained and/or without tops or lids	4
Benzene	XX
Books, magazines, publications	1(3)
Cabinets	
Solid wood or veneer	2
Metal	4
Calcium carbide	XX
Carbon disulfide	XX
Cardboard boxes	1
Carpeting and floor rugs	1(3)
Celluloid	XX
Chlorine	XX
Clothing	2(3)
Cotton (loose) wadding or waste	2
Curtains and drapes	
Fabric (Nonfast dyes)	2

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	Class
Fabric (Fast dyes)	3
Plastics	4
Drugs - in quantity	X
Electrical distribution equipment (Storage only)	
Waterproof or submersible types	4
Nonwaterproof	2
Protected contingently (B)	4
Electronic equipment (Storage only)	
Television, stereo equipment, radios	2(3)
Computers, etc.	1
Fabrics (Textile Raw Materials)	
Non water-soluble dyes	3
Otherwise	2
Food Products	X
Furniture	
Upholstered	1
Unupholstered	
Wood construction (A)	2
Metal construction, painted	4
Gasoline	X
Hydrochloric acid	XX
Hydrocyanic (Prussic) acid	XX
Magnesium	XX
Matches and sulfur products (in quantity)	X
Mattresses & box springs	1(2)
Musical instruments	
Pianos, organs, violins, etc.	1
All other types	2(3)
Nitric acid, oxides of nitrogen	XX
Oxygen	2(3)
Paints, enamels, varnishes (in quantity)	2
Paper or paper products <sup>1</sup>	
Petroleum products storage	
(unless buried and constrained)	X
Phosphorous	XX
Potassium	XX
Recreation equipment	
Sports gear, toys	2(3)
Pool tables	1
Scrap metal, constrained	5
Soaps, detergents (in quantity)	X
Sodium	XX
Sulphur	XX
Tires	
(Open storage)	X
constrained	4
Wood products, raw or finished (in quantity)	X

Notes: (A) Solid wood construction with pinned joints, reinforced corners, and lacquered or factory-baked finishes.

(B) Contingent protection shall be protection equal to that of 6 mils of polyethylene sealed to be watertight or "moth-balled."

**Sec. 1101.4 Underground Storage Tanks:** The exclusion of Class X and XX contents from interior spaces of buildings below the RFD recognizes that residual flood hazards may exist when a structure is only protected to the RFD. However, a properly designed and constructed underground storage tank and dispensing system

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Chapter 11

for Class X contents can be developed in a Special Flood Hazard Area, if such development is the only practicable alternative and it is not contained within a flood proofed structure. In addition to design criteria required by the tank manufacturers and applicable fire and safety codes, the tank assemblies should be designed assuming groundwater levels fully at the ground surface, buoyant soils above the tanks, and the tanks empty. They should also be designed assuming the tanks full with groundwater below the tanks. The tanks should be set on and anchored to reinforced concrete pads. All vents should be above all possible floodwater entry levels. The filling stack piping caps should be equipped with watertight seals if below the RFD and the dispensers should be placed above the RFD.